151 US 282

RECORD, CASE No. 14,160.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 189.

MICHAEL HAUGHEY, APPELLANT,

vs.

JESSE LEE, LEWIS S. LEE, AND WALTER LEE, COPARTNERS, TRADING UNDER THE FIRM NAME AND STYLE OF JESSE LEE & SONS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED SEPTEMBER 19, 1890.

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1 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

MICHAEL HAUGHEY *vs.* JESSE LEE, LEWIS S. LEE, and WALTER LEE, Copartners Trading under the Firm Name and Style of Jesse Lee and Sons.	No. 10. October Session, 1889. In Equity.

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } *ss:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1889, No. 10.

It is thus contained:

Be it remembered that on the twenty-fourth day of Octo-
2 ber, in the year of our Lord one thousand eight hundred and eighty-nine, Michael Haughey, by his solicitor, Edward J. O'Brien, Esquire, comes into court here and files his bill of complaint against Jesse Lee, Lewis S. Lee, and Walter Lee, copartners trading under the firm name and style of Jesse Lee and Sons, which, being read, is in the words and figures following, viz:

3 UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } *ss:*

In the Circuit Court of the United States within and for said District, in Chancery Sitting.

MICHAEL HAUGHEY, Complainant, *vs.* JESSE LEE, LEWIS S. LEE, and WALTER LEE, Copartners Trading under the Firm Name and Style of Jesse Lee & Sons, Defendants.	Bill for Infringement.

To the honorable judges of the circuit court of the United States for the eastern district of Pennsylvania:

Michael Haughey, a citizen of the State of Missouri, and resident of the city of St. Louis, Missouri, brings this his bill of complaint against the defendants Jesse Lee, Lewis S. Lee, and Walter Lee, co-
4 partners engaged in carrying on the business of importers' and manufacturers' agents in saddlery, hardware, horse goods, novelties, and specialties, at the city of Philadelphia, in said State and eastern district of Pennsylvania, and trading therein under the firm name and style of Jesse Lee & Sons.

And thereupon your orator complains and says:

That heretofore, to wit: before the 22d day of September, A. D. 1887, your orator as aforesaid was the true, original and first inventor of a certain new and useful improvement in interfering de-

vice for horses, which said improvement is fully described in the letters patent thereafter granted to him for the said invention, and hereinafter mentioned, and which had not been known or used by others before his said invention thereof, and which had not, at the time of his application for a patent therefor, been in public use or on sale for more than two years prior to his said application for a patent, as your orator verily believes.

And your orator further shows unto your honors that your said orator, so being the inventor of the said improvement in interfering device for horses, and being a citizen of the United States aforesaid, made an application to the proper department of the Government of the United States for letters patent therefor, in accordance with the then existing acts of Congress; and that such proceedings were thereafter had upon such application that thereafter, to wit: on the twentieth day of March, A. D. 1888, letters patent of the United States, for the said improvement and invention, signed, sealed and executed in due form of law, bearing date on the said twentieth day of March, A. D. 1888, and being numbered 379,644, were
5 duly issued and delivered to him, whereby there was granted and secured to your orator, his heirs, administrators, executors and assigns, for the term of seventeen years from the date of the said letters patent, the full and exclusive right of making, using and vending to others to be used, the said inventions and improvements, a description whereof is given in the words of your orator—the said inventor—in a schedule in writing, accompanied by drawings and references thereto duly annexed to the said letters patent when the same were issued and made a part thereof, as by the original letters patent, or a duly authenticated copy thereof, in court to be produced, will more fully appear.

And your orator further shows unto your honors, that since the grant to him of the said letters patent for the said invention and improvement aforesaid, he has invested large sums of money, and has been at great expense and trouble in and about the said invention, for the purpose of manufacturing and selling the said improved interfering device for horses, and causing the same to be manufactured and sold, and thereby making the said letters patent profitable to himself and useful to the public.

That said invention has been, and is, of great utility and value, and of great benefit and advantage to the public, its introduction making a practical departure from prevailing means and ideas existing prior thereto, which were mainly directed towards a palliation of the evil of "interfering" in horses, rather than effecting a cure thereof, which latter frequently follows a brief use of your orator's said invention.

6 That your orator's said improved "interfering" device are simple in construction, as they are novel and effective in operation; a demand for them arises wherever their qualities become known, and they have been, and are now being manufactured and sold, or caused to be manufactured and sold by your orator, to his great benefit and advantage, and to the great benefit and advantage of the public; and your orator's exclusive right aforesaid

has been generally and fully acquiesced in and acknowledged by the public; and that your orator has, ever since the acquiring of said letters patent as aforesaid, and now is—except for the doings of the defendants and their confederates, as hereinafter set forth, and some other infringers of said letters patent—been in the exclusive possession and enjoyment of the patent right aforesaid; and that your orator will realize and receive large gains and profits, to which he is lawfully and justly entitled, if infringements thereof by the said defendants and their confederates shall be prevented.

And your orator further shows unto your honors that, on or about the 21st day of August, 1889, your orator, being then and there the owner of said letters patent as aforesaid, having learned that the Mound City Coupe Company, a corporation owning and operating a large number of horses and carriages, and conducting a large and extensive business as carriers of passengers for hire in the city of St. Louis, Missouri, were manufacturing and using in the said city of St. Louis interfering devices for horses, containing the inventions and devices patented in and by the said letters patent, and material and substantial parts thereof, did commence a suit against the
7 said Mound City Coupe Company, in the circuit court of the United States for the eastern district and division of Missouri, by bill in chancery, wherein the said Mound City Coupe Company was charged by your orator with having infringed said letters patent by the manufacture and use of interfering devices for horses, made according thereto, without the license and allowance and against the will of your orator; that thereupon the said Mound City Coupe Company, by the advice and direction of their counsel (who duly entered its appearance in said suit by answer in behalf of said Mound City Coupe Company), thereafter in said suit acknowledged the truth of the allegations of the said bill against them, and submitted to a decree, declaring your orator's said patent good and valid in law, and for an injunction and the damages sustained by your orator from its said infringement of said letters patent, and did conform thereto, all of which will more fully appear by the records of the circuit court of the United States within and for said eastern district and division of Missouri, the said cause being case No. 3052, in equity, to which, or a certified copy thereof, your orator prays leave to refer for more particularity.

Your orator further shows unto your honors, on information and belief, that by reason of the fact that the defect in horses, commonly known as "striking" or "interfering," is apt to appear unexpectedly in any horse at times, so that none of them can be said to be entirely exempt from its subjection, arising as it does from weak-
ness of the legs at the pastern joint, which weakness may be
8 induced by overdriving, overloading, or disease, it follows that there always exists a large demand for the best means of preventing the pernicious and dangerous condition of interference in horses; this demand, scattered through the numerous owners of horses thus afflicted all over the United States, prompts such owners to apply the best available remedy. And inasmuch as the device of your orator, patented to him as aforesaid, is extensively

used and known, and being easily made of materials available in the shop of any harness-maker, or saddler, or, in the scraps of harness around a stable, by anybody of a practical turn, there are a very large number of piracies or shift devices made in imitation and embodying the invention of your orator's said patent, and the same are daily used by parties too numerous for your orator to mention throughout the United States, many of whom have been notified by your orator of his rights in the premises, and in each instance such parties have acknowledged their wrong-doing and agreed thereafter to respect his rights. It would be impossible for your orator to bring an expensive suit in this honorable court against all infringers, but so far as he has done so, or inquired of others, he has been unable to find anybody who can produce any anticipation of his said patent and invention, or reasonably dispute the novelty or usefulness thereof. Notwithstanding which, he is daily being deprived of the muniments and rights granted to him in and by said letters patent, and is without means of acquiring an adjudication upon the merits so called, so that he could procure a preliminary injunction against wrong-doers, or infringers of said patent for that cause, on the filing of his bill against such. But he avers that by reason of the fact that he is the first inventor to apply this remedy to interference of horses, and that the public having for the past two years fully acquiesced therein, he has done all that he can, in equity and good conscience, be expected to do, to entitle him to the fullest protection of this honorable court in the premises.

And your orator further shows unto your honors that the said defendants, well knowing the premises, but contriving how to injure your orator, and without his consent or allowance, and without right, and in violation of said letters patent, and the exclusive rights of your orator secured to him as aforesaid, have made, used and sold, and still do make, use and sell to others, to be used and sold in said city of Philadelphia and elsewhere, a large number of interfering devices for horses—but how many your orator cannot state, but prays that the defendants may discover and set forth—each embracing the improvement in interfering devices for horses described in said letters patent aforesaid, so issued and granted to your orator, and thereby the defendants have infringed, and do still infringe, and cause your orator to fear that in the future they will infringe upon the exclusive rights and privileges so secured and intended to be secured to your orator in and by the letters patent aforesaid.

And your orator further shows unto your honors, on information and belief, that to further injure your orator, and deprive him of his exclusive rights in the premises, the said defendants unlawfully, against the will and consent of your orator, and against right, did make such counterfeit interfering devices, in imitation of your orator's said patent, and in infringement thereof, and did stamp thereon the words, "Pat. ap'd for," and did sell the same, intending thereby to injure your orator, and to deceive and mislead the public into a belief that your orator's

said device was not patented to him, when the same was so patented to your orator as aforesaid.

And defendants, in furtherance of a fraudulent design to deceive the public and injure your orator, and deprive him of his just rights in the premises, in conjunction with such unlawful manufacture and sale of said infringing device by the defendants as aforesaid, did issue and publish, and cause the same to be done and distributed in large numbers, in said city of Philadelphia and elsewhere, printed cards and circulars bearing a device and representation of your orator's said patented article, and did falsely represent therein and thereby that said device was the property of the defendants, and was not the invention and patent of your orator.

And your orator has requested the said defendants to desist from making, using, or vending to others to be used, the said interfering device for horses, embracing the improvement described in the said letters patent of your orator aforesaid, and to account with, and pay over to your orator, the profits made by the said defendants by reason of their unlawful making and using interfering devices for horses, embracing the said patented improvement of your orator as aforesaid, and reason of the defendants' conduct in know-
11 ingly and notoriously making and using and vending to others to be used and sold, your orator's said invention, and without his license and consent, they have brought disregard from others of your orator's rights in the premises, and damaged him, as he says, in the sum of ten thousand (10,000) dollars, for which he prays judgment.

But now so it is, may it please your honors, that said defendants have combined and confederated among themselves, and with other persons to your orator unknown, but whom, when discerned, your orator prays leave to make defendants herein, to resist and destroy the exclusive rights and privileges secured to your orator as aforesaid, and to make and use said improvement in interfering device for horses, described in said letters patent, without the license of your orator, and in violation of his just rights in the premises; all of which is contrary to equity and good conscience.

Forasmuch, therefore, as your orator can have no adequate relief except in this court, and to the end that the said defendants may, if they can show why your orator should not have the relief he herein prays, and may according to their best and utmost knowledge, remembrance, information and belief, full, true and perfect answer make (but not under oath, an answer under oath being hereby expressly waived) to the premises, and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every one of said matters,
and may be compelled to account for and pay to your orator
12 the gains and profits by them acquired and realized, and the damages suffered and sustained by your orator from the said unlawful acts of the premises.

Your orator prays that the said defendants, their servants, agents, attorneys and workmen, and each and every one of them, may be restrained and enjoined, by the order and injunction of this honor-

able court, from directly or indirectly making, constructing, using, vending, delivering or working, or putting or continuing in practice or operation, or use, or in anywise counterfeiting or imitating the said invention or improvement, or any part thereof, or any interfering device for horses, made in accordance therewith, or like or similar to the interfering device for horses which they have heretofore made, used or sold, in infringement of said letters patent, and that said defendants may be decreed to pay the costs of this suit, and that your orator may have such other and further relief as to this honorable court it shall seem meet to grant, and as shall be agreeable to equity in the premises.

May it please your honors to grant unto your orator the writ of injunction issuing out of and under the seal of this honorable court, commanding, enjoining and restraining the said defendants and their servants, agents, attorneys and workmen, and each and every one of them, as is hereinbefore in that behalf prayed, and also may it please your honors to grant unto your orator a preliminary injunction in due form and as is above prayed.

May it please your honors to grant unto your orator, not only the writ of injunction conformable to the prayer of this bill, but also a writ of subpœna directed to the defendants Jesse Lee,
13 Lewis S. Lee and Walter Lee, composing the firm of Jesse Lee & Sons, as aforesaid, commanding them at a certain time and under a certain penalty to appear before your honors in this court, then and there to answer unto this bill of complaint, and to abide by and perform such orders and decrees as the court may make in the premises. And your orator will ever pray.

MICHAEL HAUGHEY,
Complainant.

EDWARD J. O'BRIEN,
Solicitor for Complainant.

UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss:*

Michael Haughey, of lawful age, being duly sworn, says that he is the complainant named in the above and foregoing bill of complaint by him subscribed; that he has read the same, and knows the contents thereof; that the matters and things therein stated are true to his own knowledge, except as to those things stated on his information and belief, and as to those he believes it to be true.

Subscribed and sworn to before me this 24th day of October, A. D. 1889.

SAMUEL BELL,
U. S. Commissioner.

(Endorsed:) 10. Oct. sess., 1889. C. C. U. S., E. D. of Pa. Michael Haughey *vs.* Jesse Lee *et al.* Bill in equity. Filed Oct. 24, 1889.

14 And afterwards, to wit, on the 21st day of January, A. D. 1890, the defendants, by their solicitor, Ernest Howard Hunter, Esq., comes into court here and files their answer to the bill of complainant, which, being read, is in the words and figures following, viz:

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania.

MICHAEL HAUGHEY, Complainant, *vs.* JESSE LEE, LEWIS S. LEE, and WALTER LEE, Copartners Trading under the Style and Firm Name of Jesse Lee & Sons, Defendants.	In Equity. October Session, 1889. No. 10.

Answer.

The answer of Jesse Lee, Lewis S. Lee, and Walter Lee, copartners trading under the firm name and style of Jesse Lee & Sons, respondents, to the bill of complaint of Michael Haughey, the abovenamed complainant.

These respondents, now and at all times hereafter, saving and reserving unto themselves all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much of such parts thereof as these respondents are advised is material for them to make answer unto, answering, say:

1st. These respondents deny, upon information and belief, that heretofore and before the 22d day of September, 1887, or at any time, the said Michael Haughey was the true, original and first inventor of a certain new and useful improvement in interfering devices for horses, and deny, upon information and belief, that the same was not known or used before, or not in public use or on sale for more than two years prior to his alleged application for a patent therefor, and leave the complainant to make such proof thereof as to him may seem meet.

15 2d. These respondents are informed by said bill of complaint that on the 20th day of March, A. D. 1888, letters patent of the United States for an improvement in interfering devices for horses were issued to one Michael Haughey, but whether or not, the said Michael Haughey made the application upon which the said letters patents were issued in accordance with the then existing acts of Congress, and whether such proceedings were thereafter had upon said application that said letters patent were signed, sealed and executed in due form of law, these respondents do not know, and are not informed, save by the said bill of complaint, and do not admit the allegations of the said bill in that behalf, but leave the complainant to make such proof thereof as he may be advised.

3d. Whether or not, as alleged in the said bill of complaint, the complainant, since the grant of the said letters patent, has invested large sums of money, and has been at great trouble and expense in

and about the said invention for the purpose of manufacturing and selling the said improved interfering device for horses, and causing the same to be manufactured and sold, for the purpose of making the said letters patent profitable to himself and useful to the public, these respondents do not know and are not informed, save by the said bill of complaint, and do not admit the allegations therein contained in that behalf, but deny the same, and leave the complainant to make such proof thereof as to him may seem meet.

4th. Further answering, these respondents deny that the said invention has been and is of great utility and value and of great benefit and advantage to the public, and deny that it is a practical departure from prevailing means and ideas existing prior thereto, and deny that a brief use of complainant's alleged invention effects a cure of the evil of interfering, as alleged in the said bill of complaint.

5th. Whether or not a demand for these alleged patented devices has arisen, and whether they have been and are being manufactured and sold and caused to be manufactured and sold by the complainant, these defendants do not know and are not informed save by the said bill of complaint, and they leave the complainant to make such proof thereof as to him may seem meet.

6th. These respondents deny that the complainant's alleged exclusive right in the said devices has been generally and fully acquiesced in and ack-owledged by the public, as alleged in said bill of complaint.

7th. Whether or not the complainant commenced a suit against the Mound City Coupé Company, in the circuit court of the United States, in and for the eastern district and division of Missouri, for the infringements of the said letters patent, and whether or not the said Mound City Coupé Company acknowledged the truth and allegations of the said bill against them, and submitted to a decree
16 declaring the complainant's patent to be good and valid in law, and for injunction and damages as alleged in the said bill of complaint, these respondents are not informed save by the said bill of complaint, and do not admit the allegations therein contained in that behalf, but leave the complainant to make such proof thereof as to him may seem meet.

8th. Whether or not the complainant has notified all infringers of his alleged rights therein, and whether or not they have acknowledged their wrong-doing and agreed to respect his rights as alleged in this bill of complaint, these respondents do not know and are not informed save by the said bill of complaint, and leave the complainant to make such proof thereof as to him may seem meet, but these respondents deny that for the past two years the public has fully acquiesced in the said alleged rights.

9th. These respondents deny, as they are advised, that they or any of them have been, or are now making, using, or vending the said alleged patented improvement in interfering devices for horses within the eastern district of Pennsylvania or elsewhere, or that they or any of them have been, or are in any manner infringing the

said letters patent or the alleged or any exclusive rights of the said complainant therein.

10th. These respondents further answering admit that they have made and sold interfering devices for horses, which interfering devices were marked "Patent applied for," but deny that the said interfering devices were a counterfeit or imitation of the complainant's alleged patented improvement, or were any infringement thereon, and deny they did sell the same intending to deceive and mislead the public, but that the said interfering devices are different in construction and mode of operation from the complainant's alleged invention, and that they are made under an application for letters patent now pending before the Patent Office at Washington, and were accordingly marked "Patent applied for" as aforesaid.

11th. These respondents further answering admit that they did issue and publish, and cause to be distributed in the city of Philadelphia and elsewhere, printed cards and circulars, advertising their said improvement in interfering devices, but deny that the said printed cards or circulars bore any device and representation of the complainant's alleged patented improvement, as alleged in the said bill of complaint.

And these respondents further answering, and not waiving, but still insisting upon all and singular the matters herein set forth, say upon information and belief as follows: That the said Michael Haughey, in the said bill of complaint mentioned, was not the true, original and first inventor or discoverer of the said matter specified or claimed in the said letters patent No. 379,644, nor of any material or substantial part of the thing patented in or by the said letters patent, but that the thing patented in or by the said letters patent, or material or substantial parts thereof were prior to the alleged invention or discovery thereof by the said Michael Haughey:

17

1. Known to and used by the following-named persons of the following places, respectively, to wit:

Charles Brinckerhoff, of, and at Fishkill, in the State of New York; Henry Deamer, of, and at Philadelphia, Pennsylvania; Alonzo Wiley, of, and at Philadelphia, Pennsylvania, and John H. B. Miller, of, and at Philadelphia, Pennsylvania, and also known and used by others whom the respondents crave leave to add hereafter, as they may be advised.

2. Patented or described and shown in the following letters patent of the United States:

J. J. Davy, 61655, January 29th, 1867.
F. B. Carleton, 60687, January 1st, 1867.
H. A. Hall, 77728, May 12th, 1868.
E. Chesterman, 81601, September 1st, 1868.
W. H. Hall and J. R. Clifford, 81998, September 8th, 1868.
C. Brinckerhoff, 85205, December 22d, 1868.
J. Smith, 105,990, August 2d, 1870.
A. D. Westbrook, 160,243, February 23d, 1875.
H. G. White, 173,838, February 22d, 1876.
C. B. Dickinson, 220,585, October 14th, 1879.

J. Young, Jr., 250,771, December 13th, 1881.

F. Burling, 303,617, August 19th, 1884.

And also in other letters patent and publications which these respondents crave leave to add hereafter as they may be advised.

These respondents further answering, say that they are advised, and believe, and thereupon submit to the court that by reasons of the foregoing facts the said letters patent No. 379,644 are null and void.

12th. These respondents further answering deny that they, or any of them, have combined and confederated among themselves or with any other persons to resist and destroy the alleged exclusive rights, privileges or any rights of the complainant as alleged in the said bill of complaint.

All of which matters and things these respondents are ready and willing to aver, maintain and prove as this honorable court may direct; and these respondents submit to this honorable court that the complainant has no right to any further answer to his bill of complaint or any part thereof, and no right to any injunction or account to any relief prayed for, and these respondents pray to be dismissed with their reasonable costs in this behalf most unrightfully sustained.

ERNEST HOWARD HUNTER,
Solicitor and of Counsel for Defendants.

18 COUNTY OF PHILADELPHIA, } ss:
State of Pennsylvania, }

Lewis S. Lee, being duly sworn, doth depose and say, that he is one of the respondents named in the foregoing answer subscribed by him, and that he is a member of the firm of Jesse Lee & Sons, and that he has read the said bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to these matters he verily believes them to be true.

LEWIS S. LEE.

Subscribed and sworn to before me this twentieth day of January, A. D. 1890.

GEO. W. REED,
[SEAL.] *Notary Public.*

(Endorsed:) In the circuit court of the United States, eastern district of Pennsylvania. In equity. Oct., '89. No. 10. Michael Haughey *vs.* Jesse Lee *et al.* Answer. Filed Jan. 21, 1890.

19 And afterwards, to wit, on the 21st day of January, A. D. 1890, the complainant, by his solicitors, Edward J. O'Brien, Esquire, and Edward P. Bliss, Esquire, comes into court here and files affidavits in support of motion for preliminary injunction, which, being read, are in the words and figures following, viz:

20 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

MICHAEL HAUGHEY, Complainant,
vs.
JESSE LEE *et al.*, Defendants. } In Equity. Bill for Infringement.

Michael Haughey, of lawful age, being duly sworn, on oath deposes and says that he is the complainant in this suit and the inventor and patentee of the device to prevent interfering in horses described and shown in the letters patent of the United States granted to him March 20, 1888, No. 379,644; that he knows the device called Busch's dangle-boots for spreading a horse's gait, manufactured and sold by the defendants; that it is identically the same device for which said letters patent were granted to affiant, and they, defendants, have made and sold the same without the license, consent, or allowance of affiant, even going so far as to sell them to parties in the city of St. Louis, where affiant resides.

Affiant says that he is sorely harassed and daily suffering extensive damage by reason of the defendants falsely represent-
21 ing to the trade that said Busch's dangle-boot was not the property of affiant under his, affiant's, said letters patent, and licensees of affiant who lawfully make and sell said interfering device of affiant's said patent have had their trade cut off and in a measure destroyed by the defendants, who accomplish such ends by circulating advertising cards, of which the following is a sample, to wit:

Busch's Dangle-boots for Spreading a Horse's Gait.

Purpose.—A cure for the habit of interfering; not simply a protection.

Action.—The balls strike the opposite leg and the horse must travel wider to avoid them.

Make-up.—The strongest materials are used. No slipping; can't chafe.

References.—Every horseman who has ever used the Busch dangle-boot.

Price.—$2.00 per pair.

JESSE LEE & SONS,
Owners of Patent and Manufacturers,
No. 37 South Fourth Street, Philadelphia.

22 as well as by making sales of said Busch's dangle-boot, which boots have stamped thereon the words "Pat. ap'd for," thereby falsely representing that the device exemplified in said Busch's dangle-boot was not already patented to affiant.

Affiant further saith that the interfering device marked H[1], herewith presented, is the original form of the device made and used and invented by affiant and subsequently perfected and patented by him; that said device consists simply of the annular strap and buckle, with a pendant strap carrying the balls riveted to the said

annular strap. This device performs all of the functions of the patent, but affiant found that the strains on the strap, resulting from the use thereof, were such as to break the pendant strap carrying the balls sooner than when his said device was attached by a ring to the annular strap, and he added the latter for the purpose of utility and giving to the article a longer wear.

Affiant further saith that the interfering device marked H², herewith presented, is the form of the device patented to him which he now uses.

Affiant further saith that the interfering device herewith
23 presented, marked H³, is an infringing device made and sold by one Ferd. Meyer, of St. Louis, Mo., which *the* said Meyer, having been notified by affiant thereto, acknowledged said infringement and ceased to make or sell the same.

Affiant further saith that the interfering device herewith presented, marked H⁴, is an infringement of his patent made and sold by defendants herein to one L. Meyer, at St. Louis, Mo., since the filing of affiant's bill of complaint herein.

Affiant further saith that since the filing of his bill herein he has suffered great damage through the defendants' persistent and continued defiance of his rights under said patent, and that he is helpless to stem the tide of injury thereby inflicted on him by defendants, and has no hope of relief therefrom save through the interposition of this honorable court in this behalf; that he has lost the sale of a great number of his said interfering device so patented to him since the filing of the bill mainly through the wrongful acts of the defendants.

Affiant further saith that immediately upon the grant of his said patent he took steps to introduce his said device to the public and has established the manufacture and sale thereof in the cities of
Philadelphia, Sacramento, Chicago, Milwaukee, New Orleans,
24 and St. Louis, through a regular system of licensees. He has also caused the same to be patented in the Dominion of Canada and has extensively advertised said device so patented to affiant, and until the advent of the defendants' course of conduct concerning the same affiant's rights in the premises were not persistently denied; on the contrary, the public had acquiesced therein. Affiant further saith that the judgment rendered in the suit in equity stated in the bill between himself and the Mound City Coupé Co. was rendered without any collusion either on his part or that of the defendant therein, and was justly instituted and prosecuted to the extent it was and decided by confession only because there was no defence thereto.

Further this affiant saith not.

MICHAEL HAUGHEY.

STATE OF MISSOURI, }
City of St. Louis, } ss:

Subscribed and sworn to before me this 13th day of January, 1880.

JAMES F. BRADY,
Notary Public.

(Endorsed:) U. S. C. C., E. D. Pa. October sess., 1889. No. 10. In equity. Haughey *vs.* Lee *et al.* Affidavit of Michael Haughey. Filed Jan. 21, 1890.

25 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

MICHAEL HAUGHEY, Complainant, *vs.* JESSE LEE *et al.*, Defendants. } In Equity. Bill for Infringement.

Edward J. O'Brien, of lawful age, being duly sworn, on oath deposes and says that he is of counsel for the complainant in the above-entitled cause; that on the 8th day of October, A. D. 1889, affiant received by mail from Thomas Morgan, of Philadelphia, Pa., the dangle interfering device hereto annexed, as also a card signed "J. B. Craig," which said device affiant has good reason to know and believe was purchased from the defendants herein at their place of business in said Philadelphia prior to said last-mentioned date, to wit, on October 5, 1889, and for which the bill thereto annexed was given by defendants.

Affiant further saith that on Wednesday, the 23rd day of October, 1889, he purchased of defendant Lewis S. Lee, at the defend-
26 ants' place of business, numbered 37 South Fourth street, in said city of Philadelphia, the pair of so-called "dangle" interfering boots for horses herewith presented, marked "W, E. J. O'B., 10, 23, '89, bot. Jesse Lee & Sons, per Lewis S. Lee," together with the bill therefor, herewith shown.

Affiant further saith that he has gotten several printed advertising cards issued by defendants concerning said "dangle"-boots manufactured and sold by them, of which cards the following is a sample, to wit:

Busch's Dangle-boots for Spreading a Horse's Gait.

Patent pending.

Purpose.—A cure for the habit of interfering. Not simply a protection.

Action.—The balls strike the opposite leg and the horse must travel wider to avoid them.

Make-up.—The strongest material are used. No slipping. Can't chafe.

References.—Every horseman who has ever used the Busch dangle-boot.

Price.—$2.00 per pair.

JESSE LEE & SONS,
Owners of Patent and Manufacturers,
No. 37 South Fourth Street, Philadelphia.

27 wherein and whereby defendants represented that said dangle-boots (called therein "Busch's dangle-boots for spread-

ing a horse's gait") were patented, when, in truth and in fact, the same *was* not at that time, viz., October 24, 1889, patented; and affiant is informed and believes that the device exemplified and shown by said printed card- when the same were issued and circulated was not patentable to said Busch or anybody else, for the reason that the same was previously covered by the letters patent of the United States to the complainant herein, dated March 20, 1888, No. 379,644.

Affiant further saith that defendants in their letter hereto attached, marked letter No. 1, under date of Oct. 7th, 1889, refer to said Busch's dangle-boots as being patented, when, in truth, the same *was* not patented, neither were the same then patentable, for the reasons above stated.

Affiant further saith that he is informed and believes that prior to the filing of the bill herein and since the defendants have made and sold the said dangle-boots, and, although notified that the doing thereof was in contravention of complainant's lawful rights under his said patent, they have refused to refrain from doing so.

28 Affiant further saith that he was the solicitor before the Patent Office for the complainant in the procuring of his patent herein; that he, affiant, is thereby familiar with the state of the art to which said complainant's patent pertains, and affiant has reason to believe and does believe that the broad claim of said patent was granted for the reason that said complainant was the original inventor of the device to prevent horses interfering exemplified and shown in his said patent, and which comprehends the device manufactured and sold by defendants under the name of "Busch's dangle-boots for spreading a horse's gait," hereinbefore referred to.

Further this affiant saith not.

EDWARD J. O'BRIEN.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

Subscribed and sworn to before me this fourteenth day of January, A. D. 1890.

My commission as a notary public will expire on June 30th, 1893.

AUGUST AHRENS,
Notary Public, City of St. Louis, Missouri.

(Endorsed:) U. S. C. C., E. D. Pa. October sess., 1889. No. 10. In equity. Haughey *vs.* Lee *et al.* Affidavit of Edward J. O'Brien. Filed Jan. 21, 1890.

29 STATE OF MISSOURI, }
City of St. Louis, } *ss:*

John H. Pohlman, of lawful age, being duly sworn, on oath deposes and says that he is now and for twenty-five years last past has been engaged in the business of buying and selling horses in said city of St. Louis.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent *that* he has used said Haughey's device on interfering horses and recommended *them* to others and always with the most satisfactory results.

Further affiant saith not.

JOHN H. POHLMAN.

Subscribed and sworn to before me this 19th day of December, 1889.

[SEAL.] M. J. KENEFICK,
Clerk of the St. Louis Court of Criminal Correction.

30 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

MICHAEL HAUGHEY
vs.
JESSE LEE, LEWIS S. LEE, and WALTER LEE, Copartners Trading under the Firm Name and Style of Jesse Lee and Sons.

In Equity. Bill for Infringement.

Charles Pickles, of lawful age, being duly sworn, on oath deposes and says:

My name is Charles Pickles. I am 42 years old, and reside and carry on business in the city of St. Louis, State of Missouri. I am a mechanical engineer and draftsman, and have been so engaged for many years, and am chiefly occupied therewith in connection with patents for inventions and mechanical devices associated with the same, having in the course of my experience designed and superintended the construction of machinery and mechanical devices for various objects and purposes.

I am familiar with patents for inventions generally, and am frequently employed in their investigation for the purpose of determining their scope and relation to special and similar ma-
31 chines and devices connected with the art to which such specialties appertain, as exhibited in devices of a similar nature or publications of a prior date. I have made drawings and

specifications for patents and directed the doing thereof for the past twenty years, and have frequently testified as an expert in patent cases.

I know and am familiar with the drawings, specifications, and claim, as also the objects and purposes, of the letters patent of the United States granted to Michael Haughey, of St. Louis, Mo., March 20, 1888, and numbered 379,644, for an interfering device for horses, having made the drawings upon which the said patent was issued from a model furnished to me for that purpose. I have also examined and understand the specifications of said patent and the objects and purposes thereof. The objects which the inventor had in view were as he states them, viz:

"First. To provide against a horse striking or interfering by means of a pendant that will move and swing freely between his legs from a loose joint, at one or more points of attachment, to a strap fastened around his leg.

Second. To provide means for holding the pendant on a horse's leg in any desired position it may be placed in; and,

32 Third. To reduce the friction incidental to the act of striking."

In accomplishing these objects Mr. Haughey uses a strap provided with a buckle for fastening it around the horse's leg at or near the point where the horse may strike or interfere while moving—commonly a little above the pastern joint—the leg being protected from the pressure of the buckle by a pad underneath the latter; then he has a padded disk attached to the annular strap at the juncture therewith of the pendant. The foregoing features or elements, together with the pendant, constitute the entire working elements of Haughey's device. The pendant, as described in the patent, consists of the stem b^5, lugs b and b^1, ring b^3, and annular sections b^2. These annular sections have an opening in their middle to admit them on the stem b^5, and it provides that they may be made of rubber, leather, wood, or other suitable material. The pendant is fastened to the annular strap A by a small ring, which receives a lap of the stem and a small strap, and is held in place with rivets.

The inventor, however, does not limit himself to the form shown, and expressly says in the specifications that that is not essential.

33 The essential element or feature covering the principle involved in Mr. Haughey's device, as I gather the same from his patent, is the prevention of interfering in a horse by means of a flexible object interposed between his legs in the vicinity of the pastern joint, whereby the leg opposite the one carrying the object is lightly touched by it before contact or striking of the limbs, and the information thus communicated has the effect, without hurting him, of making him strive to avoid the touch of the object or pendant, which he does by keeping his legs sufficiently far apart to avoid it. That this position is correct is further shown by the second and third objects of the patentee above stated—*i. e.*, providing

means (in addition to the first) of holding the pendant in any desired place on the horse's leg and to reduce friction.

These objects, considered in connection with the broad claim of the patent, leave no doubt in my mind that it is sufficiently comprehensive to embody the features I have stated, and which the inventor points out and employs in his patent, viz., an interfering device consisting of a pendant loosely jointed to a strap passing around the leg of a horse "substantially in the manner shown and for the purposes described."

34 As I understand the terms "loosely jointed" as used in the claim, they mean a hinging or juncture of parts which admit motion and comprehend the result obtained, as, for instance, leather may be used as hinges on boxes, doors, and the like to perform the same kind of work that would be done by metal hinges; so a continuous strap, instead of a ring connection, may be employed in forming the stem of the pendant and the annular part which buckles around the horse's leg in Mr. Haughey's device without altering the means of carrying out his invention or changing in the least the substantial purposes thereof as described in the patent, as the operation in either case is precisely the same.

I have examined and understand the interfering devices for horses attached as an exhibit to an affidavit of E. J. O'Brien herein, and which are marked "W, E. J. O'B., 10, 23, '89; bought of Jesse Lee & Sons, per L. S. Lee," besides having the words "Pat. ap'd for" stamped thereon. Said exhibit or devices each contains and embodies the several and entire parts as set forth and claimed in said Haughey's patent, and they are made the counterfeit and in imitation of the device described and shown therein. They have the same general appearance and operation as the patent, and

35 contain the strap passing around the horse's leg, the buckle and its pad, together with the disk and pendant, the latter consisting of the stem and annular sections of the patent. These exhibits or devices, marked "W," etc., show a continuous strap, looped near the middle, upon which the balls of the pendant are strung, leaving sufficient length from where the strap diverges from the balls near the disk to buckle it around the horse's leg, and afford room for motion of the pendant, but this change is so small as not to be readily perceptible to a casual observer, and there is no change in the operation wrought thereby between said devices and Haughey patent. Aside from the addition of the rubber tube covering of the strap, which is entirely unnecessary to the proper action of the device, I can perceive no substantial difference between said exhibits marked "W," etc., and the device shown, described, and claimed in said patent No. 379,644.

I have examined and understand the device marked Ex. H[4] of the affidavit of Mr. Haughey herein. This device also contains and embodies the entire invention of the Haughey patent and is the same as Ex. "W," etc., herein, excepting that the pendant starts with one-half a rubber ball instead of a whole one. This, in my opinion, operates no substantial change in the structure

36 or operation of the device.

I have examined and understand the device marked Ex. H² of the affidavit of Michael Haughey herein, and find the same to be made in accordance with his said patent. The play of the pendant afforded on the metal-ring bearing is slight in comparison to that afforded by the leather of the pendant itself. It has the advantage, however, of reducing the friction, which results, in time, in cutting away the pendant from the annular strap.

I have also examined and understand the device marked Ex. H¹ of said Haughey's affidavit herein. I find the same to consist of a simple strap provided with a fastening buckle, to which is attached a pendant composed of the balls and stem of the Haughey patent, affixed by a rivet to the annular strap. This exhibit contains the essential features of the Haughey device, as hereinbefore narrated, viz., a pendant loosely jointed to a strap passing around the leg of a horse.

The loose attachment of the pendant to the annular strap calls for some means of permitting the swinging of the pendant, something in the nature of the motion afforded by what is known in mechanics as a universal joint. This means is found in the
37 pliability of the stem made of leather, although a strong cord of fibre would answer the purpose.

Further this affiant saith not.

CHARLES PICKLES.

STATE OF MISSOURI, }
City of St. Louis, } ss:

Subscribed and sworn to before me this ninth day of January, 1890. Term ends June 30, 1893.

C. D. GREENE, JR.,
Notary Public.

(Endorsed:) U. S. C. C., E. D. Pa. October sess., 1889. No. 10. In equity. Haughey *vs.* Lee *et al.* Affidavit of Chas. Pickles. Filed Jan. 21, 1890.

38 STATE OF MISSOURI, }
City of St. Louis, } ss:

Joseph B. Toeniskoetter, of lawful age, being duly sworn, on oath deposes and says that he is now and for eighteen (18) years last past has been engaged in the business of saddlery, harness-making, and horse goods at said city of St. Louis.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made

or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has sold said device for use on interfering horses, and *they* give better satisfaction than any other device for that purpose that affiant has ever known.

Further affiant saith not.

J. B. TOENISKOETTER.

Subscribed and sworn to before me this 25th day of November, 1889.

[SEAL.] FRANCIS VALLE,
Notary Public, City of St. Louis, Mo.

39 STATE OF MISSOURI, } ss:
City of St. Louis, }

August Schuddig, of lawful age, being duly sworn, on oath deposes and says that he is now and for 14 years last past has been engaged in the business of horseshoeing and wagon-making.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has used the same himself on horses and seen the same used on others, and they have in every instance given satisfaction.

Further affiant saith not.

AUGUST SCHUEDDIG.

Subscribed and sworn to before me this 25th day of November, 1889.

[SEAL.] FRANCIS VALLE,
Notary Public, City of St. Louis, Mo.

40 STATE OF MISSOURI, } ss:
City of St. Louis, }

Edward Butler, of lawful age, being duly sworn, on oath deposes and says that he is now and for twenty-seven years last past has

been engaged in the business of horseshoeing, conducting therein seven shops in St. Louis, Mo.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pend*a*nt device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has used it on his own and seen it used on a great many other horses that interfered and always with the most beneficial and satisfactory results.

Further affiant saith not.

ED. BUTLER.

Subscribed and sworn to before me this 25th day of November, 1889.

[SEAL.] FRANCIS VALLE,
Notary Public, City of St. Louis.

41 STATE OF MISSOURI,)
City of St. Louis,) ss:

Owen Shannon, of lawful age, being duly sworn, on oath deposes and says that he is now and for 14 years last past has been engaged in the business of horseshoeing in said city of St. Louis.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pend*a*nt device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has used said Haughey's device on interfering horses and recom-

mended and sold *them* to others and always with the most satisfactory results.

Further affiant saith not.

OWEN SHANNON.

Subscribed and sworn to before me this twenty-fifth day of November, 1889.

[SEAL.] FRANCIS VALLE,
Notary Public, City of St. Louis, Mo.

42 STATE OF MISSOURI, } ss:
City of St. Louis, }

E. Benjamin, of lawful age, being duly sworn, on oath deposes and says that he is now and for 15 years last past has been engaged in the business of buying, selling, and handling horses; is at present engaged in the livery and undertaking business.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pend*a*nt device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has used them on his horses and has seen them used by others with great benefit; and affiant further says they are the only device he has ever seen in his 15 years' experience that would stop a horse from interfering.

Further affiant saith not.

E. BENJAMIN.

Subscribed and sworn to before me this thirteenth day of November, 1889.

[SEAL.] FRANCIS VALLE,
Notary Public, City of St. Louis, Mo.

43 STATE OF MISSOURI, } ss:
City of St. Louis, }

I James Bellew, of lawful age, being duly sworn, on oath deposes and says that he is now and for 30 years last past has been engaged in the business of horse-dealing in this city of St. Louis, State of Missouri.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduciion of said patent I have used those boots or bangles & have recommended them to my friends, knowing them from experience to be a preventitive & also a cure for interfering horses.

JAS. BELLEW.

Subscribed and sworn to before me this twenty-fifth day of November, 1889.

[SEAL.] FRANCIS VALLE,
Notary Public, City of St. Louis, Mo.

44 STATE OF MISSOURI, } ss:
City of St. Louis, }

James Griffin, of lawful age, being duly sworn, on oath deposes and says that he is now and for twenty-five years last past has been engaged in the business of livery and undertaking and carriages.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has used said Haughey's device on interfering horses and recommended *them* to others and always with the most satisfactory results.

Further affiant saith not.

JAMES GRIFFIN.

Subscribed and sworn to before me this twenty-fifth day of November, 1889.

[SEAL.] FRANCIS VALLE,
Notary Public, City of St. Louis, Mo.

45 STATE OF MISSOURI, } ss:
City of St. Louis, }

William Willis, of lawful age, being duly sworn, on oath deposes and says that he is now and for the past 22 years last past has been engaged in the business of horseshoeing in the city of St. Louis, Missouri.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has frequently had his attention called to the good resulting from the use of the same on interfering horses, and he believes it to be the best device ever gotten up for that purpose.

Further affiant saith not.

WILLIAM WILLIS.

Subscribed and sworn to before me this twenty-fifth day of November, 1889.

[SEAL.] FRANCIS VALLE,
Notary Public, City of St. Louis, Mo.

46 STATE OF MISSOURI, } ss:
City of St. Louis, }

John Groskreutz, of lawful age, being duly sworn, on oath deposes and says that he is now and for 20 years last past has been engaged in the business of saddlery, harness-making, and horse goods at the city of St. Louis aforesaid.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted

with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has seen the same used on interfering horses with great benefit. It improves the gait and will cure the habit of interfering unless the horse is too old, but benefits all.

JOHN GROSKREUTZ.

Subscribed and sworn to before me this twenty-fifth day of November, 1889.

[SEAL.] FRANCIS VALLE,
Notary Public, City of St. Louis, Mo.

47 STATE OF MISSOURI, } ss:
City of St. Louis, }

Jonas Isaacs, of lawful age, being duly sworn, on oath deposes and says that he is now and for thirty years last past has been engaged in the business of buying, selling, and handling horses.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has used them on his horses and has seen them used by others with great benefit; and affiant further says they are the only device he has ever seen in his thirty years' experience that would stop a horse from interfering.

Further affiant saith not.

JONAS ISAACS.

Subscribed and sworn to before me this thirtieth day of November, 1889.

[SEAL.] FRANCIS VALLE,
Notary Public, City of St. Louis, Mo.

48 STATE OF MISSOURI, } ss:
City of St. Louis, }

Henry H. Toeniskoetter, of lawful age, being duly sworn, on oath deposes and says that he is now and for nineteen years last past has been engaged in the business of saddlery, harness-making, and horse goods at said city of St. Louis.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has sold said device for use on interfering horses, and they work better than any other device for that purpose that affiant has ever known and they sell well and give satisfaction.

Further affiant saith not.

HENRY H. TOENISKOETTER.

Subscribed and sworn to before me this twenty-fifth day of November, 1889.

[SEAL.] FRANCIS VALLE,
Notary Public, City of St. Louis, Mo.

49 STATE OF LOUISIANA, } ss:
County of Orleans, }

William Velden, of lawful age, being duly sworn, on oath deposes and says that he is now and for fifteen years last past has been engaged in the business of veterinary surgeon.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent —.

WM. VELDEN.

Subscribed and sworn to before me this 23rd day of November, 1889.

[SEAL.] ANDREW HOWE, JR.,
Notary Pub.

50 STATE OF MISSOURI, } ss:
City of St. Louis, }

Charles T. Hall, of lawful age, being duly sworn, on oath deposes and says that he is now and for eight (8) years last past has been engaged in the business of carrying suburban route for newspapers.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pend*a*nt device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has used the Haughey device on a great number of chronic cases and has never failed to receive the most satisfactory results. It completely changes their gait & causes them to travel with much greater ease.

CHARLES T. HALL.

Subscribed and sworn to before me this 30th day of November, 1889.

[SEAL.] JAS. F. BRADY,
Notary Public.

51 STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

James A. Marshall, of lawful age, being duly sworn, on oath deposes and says that he is now and for thirty years last past has been engaged in the business of a veterinary surgeon, twenty-one years of which was spent in Philadelphia.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfer-

ing in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pend*a*nt device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has in his practice used and directed the use of the said patented device, and has found the same of great benefit in preventing and curing the habit of interfering in horses.

JAS. A. MARSHALL, *V. S.*

Subscribed and sworn to before me this nineteenth day of December, 1889.

WILLIAM C. GROEVER,
A Notary Public for the State of Pennsylvania,
Residing in Philadelphia.

52 STATE OF MISSOURI, } ss:
City of St. Louis, }

Dr. Frank N. Earl, of lawful age, being duly sworn, on oath deposes and says that he is now and for 28 years last past has been engaged in the business of veterinary surgeon.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pend*a*nt device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has caused the invention to be used on numbers of interfering horses, and said device has given entire satisfaction. Affiant further says the device is in great demand from owners of interfering horses.

DR. F. W. EARL, *V. S.*

Subscribed and sworn to before me this twenty-seventh day of November, 1889.

[SEAL.] ALBERT GERST,
Notary Public.

53 STATE OF MISSOURI, } ss:
City of St. Louis, }

Joseph J. Kreher, of lawful age, being duly sworn, on oath deposes and says that he is now and for twenty years last past has been engaged in the business of manufacturer and dealer in saddlery, harness, and horse goods at the city of St. Louis, in the State of Missouri.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to
54 a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent affiant's company, under license of said patentee, has made and sold interfering boots made according thereto in large numbers at St. Louis aforesaid and elsewhere in the United States, and there is a large and growing demand for them, their cheapness and effectiveness recommending them to those needing the same.

Further affiant saith not.

JOSEPH J. KREHER.

Subscribed and sworn to before me this 25th day of November, 1889.

FRANCIS VALLE,
Notary Public, City of St. Louis, Mo.

(Endorsed:) U. S. C. C., E. D. Pa. October sess., 1889. No. 10. In equity. Haughey *vs.* Lee *et al.* Affidavit of J. J. Kreher. Filed Jan. 21, 1890.

55 STATE OF MISSOURI, } ss:
City of St. Louis, }

M. J. Cullen, of lawful age, being duly sworn, on oath deposes and says that he is now and for 10 years last past has been engaged in the business of livery and undertaking at the city of St. Louis aforesaid.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in pro-

moting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pend*a*nt device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent he has used said Haughey's device on a large number of interfering horses and seen *them* used on many horses belonging to others, and he deems it the best thing for the purpose ever brought to his notice.

Further affiant saith not.

M. J. CULLEN.

Subscribed and sworn to before me this 29th day of November, 1889.

[SEAL.] JOS. F. BRADY,
Notary Public.

56 STATE OF WISCONSIN, } ss:
County of Milwaukee, }

Charles J. Dyer, being duly sworn, deposes and says that he is now and for the last eighteen years has been engaged in the business of manufacturing and dealing in saddlery, harness, and horse goods at the city of Milwaukee, county of Milwaukee, and State of Wisconsin.

That for the four years last past deponent has been a member of the firm of Thomas C. Smith & Co. and the active superintendent of its business.

That said firm for all of said four years has been engaged in the manufacture and sale of saddlery, harness, and horse goods at the city of Milwaukee and elsewhere.

Deponent further says that he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses.

57 Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pend*a*nt device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent affiant's firm, under license of said patentee, has made and sold interfering boots made according thereto in large numbers at Milwaukee aforesaid and elsewhere in the United States, and there is a large and growing demand for them, their cheapness and effectiveness recommending them to those needing the same.

Further affiant saith not.

CHAS. J. DYER.

Subscribed and sworn to before me this 23rd day of November, 1889.

GEO. E. SUTHERLAND,
Notary Public.

[SEAL.]

58 STATE OF WISCONSIN, } *ss:*
County of Milwaukee, }

OFFICE OF THE CLERK OF THE CIRCUIT COURT.

I, A. De Leur, clerk of the circuit court of the county of Milwaukee, in the State of Wisconsin, the said court being a court of record and having a seal, do hereby certify that Geo. E. Sutherland, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a notary public within and for said State, residing in said county, duly appointed and qualified and empowered by the laws of said State to administer oaths, take depositions and acknowledgments of deeds, and perform such other duties as by the laws of nations or according to commercial usage may be performed by notaries public, and that to his acts *acts* and attestations as such full credit is and ought to be given in court and out. I further certify that I am well acquainted with the signature and handwriting of *of* said Sutherland, and I verily believe said signature purporting to be his is genuine; that the seal thereto attached is a correct impression of his official seal, and that said instrument is executed and acknowledged according to the laws of said State.

59 In witness whereof I have hereunto set my hand and affixed the seal of said court, at Milwaukee, in said county and State, on this 23d day of November, one thousand eight hundred and eighty-nine.

A. DE LEUR,
Clerk of Circuit Court as Aforesaid.

(Endorsed:) U. S. C. C., E. D. Pa. October sess., 1889. In equity. No. 10. Haughey *vs.* Lee *et al.* Affidavit of Chas. J. Dyer. Filed Jan. 21, 1890.

60 CITY AND COUNTY OF PHILADELPHIA, *ss:*

Thomas Morgan, being duly sworn according to law, deposes and says that he is now and for more than fifteen years last past has been engaged in the business of manufacturing and selling saddlery, harness, and horse goods in the city of Philadelphia and elsewhere.

That he knows the device to prevent and cure interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20, 1888, and the uses, purposes, and construction thereof. Affiant has sold a large number of the horse boots embodying the said device and has seen them used upon a number of horses, and is convinced that the said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses.

Affiant further says that he is acquainted with various devices designed to ameliorate the evil of interference, and, having been for many years brought in contact with harness-dealers, horse-trainers, and drivers, he believes that he has seen nearly all, if not all, of the numerous devices introduced for that purpose, but, so far
61 as he knows, no such device was made, used, or sold on the market embodying the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with said Haughey.

Affiant further says that, although harness-makers, veterinary surgeons, and owners and trainers of horses have for many years endeavored to find a means of preventing and curing the habit of interfering in horses, no satisfactory method was discovered until the invention of the said Haughey.

Affiant further says that since the granting of the said patent he has, under license of the said patentee, manufactured and sold interfering boots embodying the said invention in large numbers at Philadelphia and elsewhere in the United States, and that prior to the infringement of the defendants, Jesse Lee & Sons, there was a large and growing demand for them, their cheapness and effectiveness recommending them to those in need of such articles. Since the said Jesse Lee & Sons have put upon the market horse boots made in imitation of the said patented device affiant's sales have been greatly interfered with and diminished.

62 Further affiant saith not.

THOMAS MORGAN.

Sworn to and subscribed before me this 19th day of December, 1889.

THOS. J. HUNT,
[SEAL.] *Notary Public, No. 623 Walnut St.*

(Endorsed:) U. S. C. C., E. D. Pa. October sess., 1889. No. 10. In equity. Haughey *vs.* Lee *et al.* Affidavit of Thomas Morgan. Filed Jan. 21, 1890.

63 STATE OF MISSOURI, } ss:
City of St. Louis, }

George T. Lewis, of lawful age, being duly sworn, on oath deposes and says that he is now and for one year last past has been engaged in the business of deputy sheriff.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pend*a*nt device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent *that* he has used said Haughey's device on interfering horses and recommended *them* to others and always with satisfactory results.

Further affiant saith not.

GEO. T. LEWIS.

Subscribed and sworn to before me this 23rd day of November, 1889.

[SEAL.] MICHAEL J. KERNFICK,
Clerk of the St. Louis Court of Criminal Correction.

64 STATE OF CALIFORNIA, } ss:
County of Sacramento, }

A. A. Van Voorhies, of lawful age, being duly sworn, on oath deposes and says that he is now and for one and one-half years last past has been engaged in the business of m'f'g and dealing in saddle-, harness, and horse goods at Sacramento city, in the State of California, & elsewhere.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pend*a*nt device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent affiant's firm, under license of said patentee, has made and sold interfering boots made according thereto in large numbers at Sacramento aforesaid and elsewhere in the United States, and there is a

large and growing demand for them, their cheapness and effectiveness recommending them to horses needing the same..

Further affiant saith not.

A. A. VAN VOORHIES.

Subscribed and sworn to before me this 27th day of November, 1889.

JAS. N. PORTER,
Notary Public.

65 STATE OF LOUISIANA, } ss:
Parish of Orleans, }

Martin Weydig, of lawful age, being duly sworn, on oath deposes and says that he is now and for 30 years last past has been engaged in the business of manufacturer and dealer in saddlery, harness, and horse goods at New Orleans, in the State of Louisiana, and elsewhere.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to
66 a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent affiant, under license of said patentee, has made and sold interfering boots made according thereto in large numbers at New Orleans aforesaid and elsewhere in the United States, and there is a large and growing demand for them, their cheapness and effectiveness recommending them to those needing the same.

Further affiant saith not.

MARTIN WEYDIG.

Subscribed and sworn to before me this 23d day of November, 1889, as witness my hand & seal.

[NOTARIAL SEAL.] ANDREW HEWS,
Not. Pub.

(Endorsed:) U. S. C. C., E. D. Pa. October session, 1889. No. 10. In equity. Haughey *vs.* Lee *et al.* Affidavit of Martin Weydig. Filed Jan. 21, 1890.

67 STATE OF MISSOURI, } ss:
City of St. Louis, }

James Brennan, of lawful age, being duly sworn, on oath deposes and says that he is now and for fifteen years last past has been engaged in the business of horseshoeing.

That he knows the device to prevent interfering in horses patented to Michael Haughey, of St. Louis, Mo., under United States letters patent No. 379,644, dated March 20th, 1888, and the uses, purposes, and construction thereof; that affiant has reason to believe and does believe that said patented device is useful and efficacious in promoting the prevention and cure of the habit of interfering in horses. Affiant further saith that prior to said patent he was acquainted with sundry devices designed to ameliorate the evil of interference, but, so far as affiant knows, there were none such made or used or sold on the market which embodied the ideas and principles contained in said patent, and affiant has reason to believe and does believe that the idea of a pendant device loosely fastened to a strap passing around the horse's leg to prevent interfering, as claimed in said patent, was original with the said Haughey.

Affiant further saith that since the introduction of said patent I have sold the same boot and *has* never found a horse *they* could not stop. It is the best I have ever seen.

JAS. BRENNAN.

Subscribed and sworn to before me this twenty-fifth day of November, 1889.

[SEAL.] FRANCIS VALLE,
Notary Public, City of St. Louis, Mo.

68 And afterwards, to wit, on the 21st day of January, A. D. 1890, the defendants, by their solicitor, Ernest Howard Hunter, Esquire, comes into court here and files affidavits in opposition to motion of complainant for preliminary injunction, which, being read, are in the words and figures following, viz:

69 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

MICHAEL HAUGHEY } In Equity. October Session, 1889. No. 10.
vs.
JESSE LEE *et al.* }

Henry Deamer, of Philadelphia, Pennsylvania, being duly sworn according to law, deposes and says that he is a manufacturer of saddlery and horse goods, and resides in Philadelphia, Penna., and has been engaged in said business for many years.

That he is acquainted with the device known as the Haughey interfering device for horses, as illustrated in the device marked Lee Exhibit A, and that he has examined the same.

That interfering devices for horses employing a leg strap and a pendant and operating in substantially the same manner as the said Haughey device were made by the affiant and were practically and

publicly used prior to the 22nd day of September, 1885, and that one of the said devices which were made by him is substantially represented in defendants' exhibit marked Lee Exhibit B.

HENRY DEAMER.

Sworn to and subscribed before me this 21st day of January, A. D. 1890.

[SEAL.] GEORGE W. CLEMENT,
Notary Public.

70 (Endorsed:) In the circuit court of the United States, eastern district of Pennsylvania. In equity. October sess., 1889. No. 10. Haughey *vs.* Lee *et al.* Surmotion for preliminary injunction. Affidavit of Henry Deamer. Filed Jan. 21, 1890.

71 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

MICHAEL HAUGHEY *vs.* JESSE LEE *et al.* } In Equity. October Session, 1889. No. 10.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss.:*

George S. Christie, being duly sworn according to law, deposes and says that he is a resident of Philadelphia, State of Pennsylvania, and is a salesman for Jesse Lee & Sons, the defendants in this suit.

That he has been selling for the said firm the devices known as the Busch dangle-boot.

That in making the said sales he has never pretended or represented that the said Busch device was the same or an imitation of the so-called Haughey interfering device, but has always been careful to point out the differences and advantages possessed by the Busch boot over the said Haughey interfering device.

That he has sold a large number of the said Busch boots, and that almost invariably the persons with whom he dealt,
72 though knowing of the Haughey device, have preferred the Busch boot.

GEO. S. CHRISTIE.

Sworn to and subscribed before me this 20th day of January, A. D. 1890.

GEO. W. REED,
Notary Public.

(Endorsed:) In the circuit court of the United States, eastern district of Pennsylvania, In equity. October sess., 1889. No. 10. Michael Haughey *vs.* Jesse Lee *et al.* Surmotion for preliminary injunction. Affidavit of George S. Christie. Filed Jan. 21, 1890.

73 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

MICHAEL HAUGHEY
vs.
JESSE LEE *et al.* } In Equity. October Session, 1889. No. 10.

On motion for preliminary injunction.

STATE OF PENNSYLVANIA, }
County of Philadelphia, } *ss:*

Affidavit of R. M. Hunter Against Motion.

Rudolph M. Hunter, being duly sworn according to law, deposes and says: I am 33 years of age, and am by profession a mechanical engineer and solicitor of patents. I reside at Philadelphia, Penna., and my offices are located at 926 Walnut street, Philadelphia, and 115 Broadway, N. Y. city, N. Y. I am professionally educated as an engineer, and have designed and constructed as well as operated large quantities of machinery of all kinds. I have been engaged in patent business for many years, and have prepared applications and secured many hundreds of patents for others and for myself. For over ten years past I have been almost constantly called upon to give expert opinions in regard to machines and structures
74 set out in patents and the bearing of one upon another, and also to give expert testimony in suits involving the infringement of patents, and at present my time is almost exclusively occupied in that branch of my profession.

I am familiar with the state of the art relating to horse boots, and particularly with that portion thereof concerning interfering devices. I have carefully examined letters patent 397,644 to Michael Haughey, patent in suit, and understand the same.

I have examined and am also familiar with the apparatus manufactured and sold under the said letters patent and as exhibited in the defendants' exhibits of the Haughey apparatus. I am also familiar with the apparatus known as the Busch dangle-boot sold by the defendants and as set forth in the exhibits of the alleged infringing apparatus in this suit. I have carefully compared these two apparatuses, and am of the opinion that they are materially different in construction and mode of operation, and that the apparatus known as the Busch dangle-boot is not an infringement upon the invention set forth in letters patent No. 379,644 referred to. From an examination of the said letters patent I understand
75 the invention therein set forth to consist of an interfering device, consisting of a pendant made of rubber or wood or other suitable material, loosely jointed to a strap passing around the leg of a horse, substantially in the manner shown and for the purposes set forth. The object of this invention is to prevent a horse striking one of his legs with the other during motion and thereby injuring the leg. This is the evil known as interfering. To accomplish this object the inventor employs a leg strap, which may be attached to the horse's leg in any desired position, and

loosely jointed to the leg strap is a depending portion or pendant, which is free to swing from this loose joint while the horse is in motion, and thereby strike the opposite leg if the horse travels with his legs too close, the swinging of the pendant being imparted by the movement of the leg carrying the apparatus. In its specific details there is illustrated a pendant formed of a stem, provided with lugs at the top and bottom, and supporting a series of balls or annular sections. The upper end of the stem B^5 is looped about a ring, B^3, and fastened, and this ring is attached to the strap by means of a strap, B^4, passing around the ring B^3 and fastened to the strap by rivets, C^1. A modification of the specific formation of the pendant is illustrated in Fig. 2 of the patent, but there is no modification of the loose joint shown or described. I under-
76 stand, therefore, that while the invention may not be limited to any specific construction of the pendant itself, the two essential features of this invention lie in the employment, 1st, of a pendant; 2nd, of loosely jointing the pendant to the leg strap.

By a pendant, and as I understand the term to be used in the Haughey patent, is meant a depending or hanging piece. In fact, this *si* the only meaning that can be possessed by the word, and I am unaware of any other use of the term than with this signification. The term loosely jointed, as I understand it, means the jointing or connecting of two separate parts together loosely or with freedom of motion of one or both of the parts relatively to each other. I understand the invention set forth in these letters patent No. 379,644 to consist of a leg strap and a hanging or depending piece or pendant separate from the leg strap, and loosely jointed or connected therewith with freedom of motion relatively to the leg strap. I have read and examined the affidavit of Charles Pickles in behalf of the complainant in this suit, and I am of opinion that the same is based upon a misconception of the Haughey invention and without a knowledge of the prior state of the art. I note particularly the statement contained in the said affidavit that
77 "the essential element or feature covering the principle involved in Mr. Haughey's device * * * is the prevention of interfering in a horse by means of a flexible object interposed between his legs in the vicinity of the pastern joint, whereby the leg opposite to the one carrying the object is lightly touched by it before contact or striking of the limbs, and the information thus communicated has the effect without hurting him of making him strive to avoid the touch of the object or pendant, which he does by keeping his legs sufficiently far apart to avoid it." An examination of the state of the art will disclose the fact that the idea of curing the evil of interfering "by means of a flexible object interposed between the horse's legs in the vicinity of the pastern joint" was not novel with Michael Haughey's invention, but that the same was illustrated in a number of the patents of the prior-existing art, and notably in letters patent No. 61655, of J. J. Davy, patented Jan'y 29th, 1867; No. 77728, J. A. Hall, May 12, 1868; 81998, Hall & Clifford, Sept. 8th, 1868; C. B. Dickinson, Oct. 14, 1879, 220,585, and J. Young, Jr., 250,771, Dec. 13, 1881. It is therefore impossible to put upon

the claim of the Haughey patent any such broad interpretation as that given by the deponent Pickles. The particular form of
78 pendant illustrated in the Haughey patent, and heretofore referred to, is not a specific invention of the said Michael Haughey, but, on the other hand, his invention contemplates modifications in the formation of that pendant, as is illustrated in Fig. 2 of the drawing. Furthermore, the employment of the annular sections upon the stem, as set forth in Haughey's patent in Fig. 1, is not original with the said Haughey, but I find these balls or annular sections to be illustrated in the patent to Brincker-off, No. 85205. There is nothing claimed as novel in the particular features of the pendant itself as illustrated in the Haughey patent.

The apparatus made by the defendants and known as the Busch dangle-boot, as I understand the invention, differs both in construction and mode of operation from anything disclosed in the Haughey patent. In this case a loosely jointed pendant is not employed, but a laterally projecting striker, which is formed by looping a leg strap so that a portion thereof will project laterally from the portion which passes around the leg of the horse. This laterally projecting portion may be provided with any convenient device, such as the balls of the Brinckerhoff patent, for the purpose of giving greater
79 firmness and strength to the laterally projecting loop. The portion of the leg strap which encircles the leg is enclosed with a tubular covering which prevents the leg strap from coming in contact with the leg of the horse and injuring it.

In the exhibits in this case are shown two forms, slight modifications of the applicant's construction. In the exhibit marked Complainant's Exhibit H[1] the leg strap is shown attached to the tubular covering at the points on each side of the loop, while in the construction exhibited in the Complainant's Exhibit H[4] the strap is not so attached, but is loose throughout its entire length, the upper ball or the top of the device, which may be carried by the loop, is cut off or made flat. By this construction the laterally projecting striker formed by the loop portion of the strap may be kept in a perfectly horizontal plane by drawing or tightening the ends of the strap projecting through the tubular piece. This is a great advantage, as the most effective work is accomplished by the striker when it is in an horizontal plane. The essential feature of the Busch device is that the striker shall laterally project, so that during the motion of the horse it will move in a substantially horizontal plane, and will not fly about in different directions, as does the loosely jointed pendant of the Haughey
80 patent. As I understand it, this flying about of the pendant in a variety of directions is a highly objectionable feature, for the reason that the pendant will strike not only the opposite leg of the horse, as is intended, but also the leg by which it is carried, a thing which is impossible with the laterally projecting striker of the Busch device. In the apparatus exhibited in Complainant's Exhibit H[1] by reason of the faulty construction of allowing the stitches to pass through the leg strap and thereby secure it to the tubular portion, so as to prevent the tightening of the striker, this

striker is caused to be deflected slightly from an horizontal plane, but that does not materially change the device, for the striker is still a laterally projecting striker, and is in no sense a pendant loosely jointed to the leg strap, but has a loop portion formed continuous with the portion of the leg strap encircling the leg, and thereby possesses a flexibility which allows it to swing always in substantially an horizontal plane. These two constructions of the Busch interfering device illustrated in the two exhibits in this case both possess these features of having the striker formed continuously with the leg strap, so as to be flexible at the neck of the loop and to laterally project to a greater or less degree. I understand, therefore,
81 that the essential features of the Busch device, as illustrated in these exhibits, are the lateral projection of the strike and the flexibility due to the striker being formed continuous with the leg strap, none of which features are to be found in the Haughey device or in the Haughey patent in suit. I am therefore of the opinion that the Busch device is not, in construction and operation, similar to anything that is shown in the Haughey patent in suit.

I notice that in the said Haughey patent there are shown pads carried by the leg strap, and that similar pads are employed in the defendants' device. I do not find, however, in the claim of the Haughey patent any reference to these pads, and I do not understand that they are a material part of the invention therein set forth. I understand that the employment of pads in substantially in this manner and for the same purpose have been long used in the art, as is shown, for instance, in the patent of Henry A. Hall, No. 77728, May 12, 1868.

I observe also in the affidavit of Charles Pickles the statement that the loose attachment of the pendant to the annular strap calls for some means of permitting the swinging of the pendant, something in the nature of the motion afforded by what is known in mechanics as an universal joint. This feature of motion
82 similar to universal joints is not possessed by the defendants' device, in which the motion is limited to a swinging motion in an approximately horizontal plane.

In my profession as a patent solicitor and under instructions I prepared and filed in due form of law an application upon the Busch interfering device, as illustrated by the exhibits thereof in this suit, the said application having been filed on the 16th day of Sept., 1889, and serially numbered 324,069; that among the claims presented in the said application are the following:

"In an interfering device, the combination of a tubular piece adapted to encircle the leg of a horse, a strap extending throughout said tubular piece and having a swinging portion projecting through an hole in the side of said tubular piece adapted to form a swinging striker to strike the other leg of the horse and prevent interfering, whereby said strap does not come directly in contact with the legs of the horse."

"In an interfering device, the combination of a tubular piece adapted to encircle the leg of a horse, a strap extending throughout said tubular piece attached to it at one end only and having a

swinging portion formed of a loop in the length of said strap
83 projecting through an hole in the side of said tubular piece adapted to form a swinging striker to strike the other leg of the horse and prevent interfering, whereby said strap does not come in contact with the leg of the horse."

"An interfering device for horses, consisting of a strap encircling the leg of a horse and having a portion of its length form into a loop, and devices carried by said looped portion to form a laterally projecting striker adapted to swing out and strike the other leg of the horse to prevent interfering."

That these claims, among others, in the said application have been passed by the examiner having consideration thereof as being allowable, and that letters patent No. 379,644, complainant's patent in suit, was not cited by the examiner having charge of the said application to any of these claims.

R. M. HUNTER.

Sworn to and subscribed before me this 21st day of January, A. D. 1890.

[SEAL.] GEO. B. HYNSON,
Notary Public.

(Endorsed:) In the circuit court of the United States, eastern district of Pennsylvania. In equity. October sess., 1889. No. 10. Michael Haughey *vs.* Jesse Lee *et al.* Surmotion for preliminary injunction. Affidavit of R. M. Hunter. Filed Jan. 31, 1890.

84 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

MICHAEL HAUGHEY *vs.* JESSE LEE *et al.* } In Equity. October Session, 1889. No. 10.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss:*

Lewis S. Lee, of Philadelphia, Pennsylvania, being duly affirmed according to law, deposes and says that he is a member of the firm of Jesse Lee and Sons, importers and manufacturers' agents, saddlery, hardware, horse goods, etc., doing business in the city of Philadelphia; that he is familiar with the various horse boots and interfering devices that have been upon the market for a number of years past, and that he understands fully the Haughey interference device as illustrated in letters patent No. 379,644 and in the devices sold by the said Haughey under those letters patent; that he is also familiar with the device known as the Busch dangle-boot, such as is exhibited in the exhibits in this case, being the device manufactured and sold by the defendants; that he fully understands the construction and mode of operation of the two devices and is
85 of the opinion that the Busch device is materially different in construction and mode of operation from that illustrated in the Haughey patent.

That he understands the Haughey patent to cover an interfering device consisting of a pendant made of rubber, wood, or other suitable material loosely jointed to a strap passing around the leg of a horse substantially in the manner shown and for the purpose described in the specification and drawings of the said Haughey patent; that in this construction the pendant is hung from the leg strap, being connected therewith by a loose joint so as to be free to swing upon said joint with the intention of striking the opposite leg of the horse when he travels with his legs close for the purpose of causing him, in order to avoid the blow, to travel with his legs farther apart; that from the peculiar construction set forth in the Haughey patent this object is very imperfectly accomplished and does not produce the results which it is intended to produce, for the reason that the loosely jointed pendant does not at all times swing out in the manner intended, for the purpose of striking the opposite leg, but swings about in all directions and constantly strikes the leg to which it is attached, as well as the opposite leg, thereby producing an effect which is highly objectionable and which is not intended by the device.

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That this imperfect operation has been called to the attention of the affiant by many persons, and that it is due to the particular construction of the device which is set forth in the claim of the Haughey patent and illustrated in the drawing—that is to say, it is the formation of the striking portion as a pendant and loosely jointing it to the leg strap that produces the variety of motion in all directions and causes the pendant to strike the leg of the horse to which the strap is attached in the manner described.

That the defendants' firm of Jesse Lee and Sons are engaged in the manufacture and sale of an interfering device for horses called the Busch dangle-boot, which, as this affiant is informed and believes, is the true and sole invention of one Charles L. Busch, of Philadelphia, Pennsylvania; that the said Busch interfering device does not have a pendant, but, on the contrary, employs a laterally projecting striker; that this laterally projecting striker is the essential feature of the Busch device; that it is so supported by the leg strap that it does not depend or hang down in the manner of the loosely jointed pendant in the Haughey patent, but projects laterally so that it cannot possibly strike the leg to which it is attached, but can only operate upon the opposite leg of the horse when he travels with his legs too close; that this laterally projecting striker is not loosely jointed to the leg strap, but is formed continuous with the leg strap, the same encircling the leg of the horse and being formed with a loop portion, which projects laterally from the leg-encircling portion in the manner illustrated in the defendants' device exhibited. The portion of the strap which encircles the leg is enclosed in a tubular piece which prevents the strap coming in contact with the leg of the horse, and the striker may be tightened or loosened by tightening or loosening the leg strap within this tubular portion; that the strap forming the laterally projecting striker is continuous with the leg strap, and by this means the striker *is continuous with the leg strap, and by this*

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means the striker may be adjusted or tightened so that it will always project laterally.

That the rights in the Busch invention are owned by a member of the firm of Jesse Lee and Sons by a duly executed assignment, and that, to the knowledge of the affiant, there has been prepared and is now pending before the Patent Office at Washington an application for letters patent upon the said improvement of
88 Busch, and that the claims covering the said device, as the affiant is informed by his attorney and verily believes, are passed by the examiner having charge of the said application as being allowable, and that the said Busch boots are manufactured under the said pending application, and, in accordance with that fact, have been marked "Patent applied for," as is the custom in the trade.

That this affiant has never in his business or otherwise attempted to mislead or deceive any person into supposing that the so-called Busch dangle-boot manufactured by his firm was an imitation or counterfeit of the Haughey device, but that he has in all cases been careful to point out the differences between the two devices and to show the differences in construction and operation and the advantages and novel features possessed by the Busch boot, and has always instructed his salesmen in their business to do the same, and that many persons have expressed to him a preference for the Busch over the Haughey boot by reason of the fact that it perfectly accomplished the object for which it is intended, whereas the Haughey device does not.

That he has reason to believe and does believe that the said Michael Haughey was not the original inventor of the al-
89 leged improvement set out in letters patent No. 379,644, or any material part thereof, but that the same was known and publicly used prior to the invention of the said Haughey, and notably by one Alonzo Wiley, deceased, of Philadelphia, Pennsylvania, and was known to John H. B. Miller, of Philadelphia, Pennsylvania, and this affiant believes that he can prove.

LEWIS S. LEE.

Affirmed to and subscribed before me on the twentieth day of January, A. D. 1890.

[SEAL.] GEO. W. REED,
Notary Public.

(Endorsed:) In the circuit court of the United States, eastern district of Pennsylvania. In equity. October sess., 1889. No. 10. Michael Haughey *vs.* Jesse Lee *et al.* Surmotion for preliminary injunction. Affidavit of Lewis S. Lee. Filed Jan. 21, 1890.

90 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

MICHAEL HAUGHEY
vs.
JESSE LEE *et al.* } In Equity. October Session, 1889. No. 10.

STATE OF PENNSYLVANIA, }
County of Philadelphia, } *ss:*

Walter Lee, of Philadelphia, Pennsylvania, being duly affirmed according to law, deposes and says that he is a member of the firm of Jesse Lee and Sons, importers and manufacturers' agents, saddlery, hardware, horse goods, etc., doing business in the city of Philadelphia, Pennsylvania; that he is familiar with the Haughey device for curing interference in horses as illustrated in letters patent No. 379,644 and exhibited in the device marked "Lee Exhibit A" and with the alleged infringing device known as the Busch dangle-boot, sold by the defendants, Jesse Lee and Sons; that the said Busch boot is not the same in construction and mode of operation as the device set out in the Haughey patent, nor is it, in his opinion, an infringement thereof; that he understands the Haughey device to consist of a pendant made of rubber, wood, or other suitable material loosely jointed to a strap passing around the leg of a
91 horse, substantially in the manner shown in the drawings of the Haughey patent and for the purposes set forth in the specification thereof, and that this pendant portion is intended to strike the other leg of the horse during motion and thereby cause the horse to travel with his legs spread farther apart, and thus cure the evil of interfering; that this function is imperfectly accomplished by the Haughey device by reason of the fact that a pendant is employed, and that it is loosely jointed to the strap, the effect of which is that the pendant or depending portion is free to swing in all directions, and consequently strikes not only the opposite leg of the horse, as it is intended, but also the leg upon which it is carried; that this fault is due directly to the peculiarity of construction illustrated in the drawings and set forth in the claim, to wit, the employment of a pendant and the loose joint.

That the Busch device is constructed differently, and by its difference of construction does not possess this objectionable feature. The Busch device consists of a continuous strap formed into a loop carrying balls or any other convenient device forming a laterally projecting striking portion; that portion of the strap which
92 encircles the leg of the horse is enclosed within a tubular covering, so that the strap does not come directly in contact with the leg of the horse. By this construction the striking portion is caused to project laterally, and during motion it will swing in a substantially horizontal plane at all times, and consequently can strike only the other leg of the horse and not that upon which it is carried.

That this improved operation is due entirely to the improved construction, whereby the laterally projecting striker is employed in-

stead of a pendant or depending portion and the striking portion is not loosely jointed to the leg strap, but is flexibly supported thereby, being formed in one continuous piece with the leg strap; that by this construction the striking portion may be adjusted and tightened by tightening the end of the strap so that the striker may be kept always laterally projecting; that the Busch device was never made nor has it ever been represented by affiant nor so far as he is aware by any member of the firm of Jesse Lee and Sons nor by any representative thereof as the same device as the Haughey interfering apparatus nor as an imitation thereof.

That these devices have been made by the firm of Jesse
93 Lee and Sons as being the invention of one Charles L. Busch, of the city of Philadelphia, and that the said invention, by duly executed assignment, is the property of the said Walter Lee; that there has been prepared and filed an application for letters patent upon the said Busch device, and in accordance with that fact they have marked the apparatus made by them "Patent applied for," in accordance with the custom of the trade; that, as deponent is informed by his attorney in the prosecution of the said application and verily believes, claims covering the said Busch improvement have been passed by the examiner having charge of the said application as being allowable, and that it is the intention of the deponent to have his attorney immediately allow the said application to be issued.

That in his business in the firm of Jesse Lee and Sons in selling the said Busch devices the affiant has in all cases pointed out and shown the differences of construction and mode of operation between the said Busch boot and the Haughey device and the advantages possessed by the former.

Deponent further declares that he has reason to believe and does believe that the said Michael Haughey was not the original and first inventor of an alleged improvement in interfering de-
94 vices for horses, set forth in the said letters patent No. 379,644, nor of any material part thereof, but that the same was known and used prior to the alleged invention of the said Haughey in the city of Philadelphia by one Alonzo Wiley, now deceased, and that the knowledge of the said use was possessed by one John H. B. Miller, also of the city of Philadelphia, which this affiant believes that he can prove.

And further he saith not.

WALTER LEE.

Affirmed to and subscribed before me on the 20th day of January, A. D. 1890.

[SEAL.] GEO. W. REED,
Notary Public.

(Endorsed:) In the circuit court of the United States, eastern district of Pennsylvania. In equity. October sess., 1889. No. 10. Michael Haughey *vs.* Jesse Lee *et al.* Surmotion for preliminary injunction. Affidavit of Walter Lee. Filed Jan. 21, 1890.

95 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

MICHAEL HAUGHEY
vs.
JESSE LEE *et al.* } In Equity. October Session, 1889. No. 10.

COUNTY OF PHILADELPHIA, }
State of Pennsylvania. }

Charles H. Kendrick, of Philadelphia, Pa., being duly sworn, doth depose and say that he is extensively engaged in the livery business at 1126 Race street, and has been thoroughly familiar with the care and management of horses for over thirty years; that he is familiar with Haughey patent interfering device for horses set out in letters patent No. 379,644, of 1888, and also the Busch dangle-boot sold by the defendant-Jesse Lee & Sons; that he has practically applied and used both the Haughey interfering device and the Busch dangle-boot, and is of the opinion that the Busch dangle-boot is far superior to the Haughey interfering device for the reason that the striker remains at all times projecting laterally from the leg of the horse in the case of the Busch boot and is in the proper position for acting upon the horse's leg to insure the desired object in inducing the horse to keep his legs apart, and also for the
96 reason that the attachment to the horse is such as to more perfectly protect the leg and hold the position of the dangle; that he is of the opinion, from practical experience, that the Haughey interfering device is defective in that it swings in all directions, striking the leg to which it is attached as often as the other leg, and in many cases not properly acting upon the leg which should be struck; that he is firmly of the opinion that the Busch dangle-boot is much superior in practice and construction to the Haughey interfering device.

CHAS. H. KENDRICK.

Sworn and subscribed to before me this 20th day of January, A. D. 1890.

[SEAL.] GEO. B. HYNSON,
Notary Public.

(Endorsed:) In the circuit court of the United States, eastern district of Pennsylvania. In equity. October sess., 1889. No. 10. Michael Haughey *vs.* Jesse Lee *et al.* Surmotion for preliminary injunction. Affidavit of Charles H. Kendrick. Filed Jan. 21, 1890.

97 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

MICHAEL HAUGHEY
vs.
JESSE LEE *et al.* } In Equity. October Session, 1889. No. 10.

STATE OF PENNSYLVANIA, }
County of Philadelphia, } *ss:*

Charles L. Busch, of Philadelphia, Pennsylvania, being duly sworn according to law, deposes and says that he is engaged in the business of manufacturing horse boots, and that he is fully acquainted with the device known as the Haughey interfering device for horses and illustrated in letters patent No. 379,644, and understands the same; that the said interfering device for horses does not efficiently accomplish the object for which it is intended by reason of the fact that the pendant portion strikes the leg of the horse to which the interfering device is attached as well as the opposite leg, which is a very objectionable feature, and this fault is due to the fact that the said striking portion is formed as a pendant or depending part and is loosely jointed to the leg strap.

98 That he is the inventor of the apparatus known as the Busch dangle-boot, the device sold by the defendants, and that the same is different in construction and mode of operation from the said Haughey device; that the essential feature of the Busch dangle-boot is that the striking portion projects laterally from the leg strap, so that it cannot strike the leg by which it is carried and is not a pendant or depending portion; that the said striker is not loosely jointed to the leg strap, but is formed continuous therewith, and by this construction it may be tightened, so as to be kept always laterally projecting.

That he has prepared and filed in the Patent Office at Washington an application for letters patent upon his improvement, said application being No. 324,069, and filed on the 16th day of September, 1889; that claims covering the alleged infringing device as illustrated in the exhibits purchased from Jesse Lee and Sons in this case have been passed without objection by the examiner, and it is understood that such claims are in an allowable condition, and instructions have been given to the attorney to allow the patent with the said claims to be issued; that affiant, under a duly executed assignment, a copy of which is annexed to this affidavit, has

99 sold and transferred his interest in the said invention and application to Walter Lee, of the firm of Jessee Lee and Sons, and that the said Busch dangle-boots made by the said firm of Jesse Lee and Sons were made under the aforesaid application and were marked "Patent applied for," as is customary in the trade.

That deponent has reason to believe and does believe that the interfering device made by the said Michael Haughey, and as set forth in letters patent No. 379,644, were not the invention of the said Haughey nor any material part thereof, but that the same were known and used prior to the alleged invention of the said Haughey

by one Alonzo Wiley, deceased, of Philadelphia, Pennsylvania, and that a knowledge of the use by the said Wiley was known to one John H. B. Miller, of Philadelphia, as the affiant believes can be proved.

And further the affiant saith not.

CHARLES L. BUSCH.

Sworn and subscribed before me on the 20th day of January, A. D. 1890.

GEO. B. HYNSON,
Notary Public.

[SEAL.]

100 Whereas I, Charles L. Busch, of Philadelphia, Pennsylvania, have invented a new and useful improvement in interfering devices for horses, for which I am about to make application for letters patent of the United States, which application was executed by me on the 10th day of September, A. D. 1889; and whereas Walter Lee, of Philadelphia, in the county of Philadelphia and State of Pennsylvania, has agreed to purchase from me all the right, title, and interest which I have in and to the said invention and application or which I may have in and to the same in consequence of the grant of any letters patent therefor, and has paid unto me, the said Charles L. Busch, the sum of one dollar, the receipt of which is hereby acknowledged: Now, this indenture witnesseth that for and in consideration of the said sum to me paid I have assigned, sold, and set over, and do hereby assign, sell, and set over, unto the said Walter Lee the full and exclusive right to the said invention, as fully set forth and described in the specification and drawings which I have prepared and executed preparatory to the obtaining of letters patent therefor, and I do hereby request the Commissioner of Patents to issue the said letters patent to the said Walter
101 Lee, as the assignee of the whole right and title thereto, for the sole use and behoof of the said Walter Lee and his legal representatives.

In testimony whereof I have hereunto set my hand and seal this 10th day of September, A. D. 1889.

CHARLES L. BUSCH. [L. S.]

Signed, sealed, and delivered in the presence of—
ERNEST HOWARD HUNTER.

(Endorsed:) In the circuit court of the United States, eastern district of Pennsylvania. In equity. October sess., 1889. No. 10. Michael Haughey *vs.* Jesse Lee *et al.* Surmotion for preliminary injunction. Affidavit of Chas. L. Busch. Filed Jan. 21, 1890.

102 And afterwards, to wit, on the 28th day of January, A. D. 1890, come the parties aforesaid, by their solicitors aforesaid, and, this cause being called for argument on motion for preliminary injunction and having been argued by counsel for the respective parties and the court being fully advised in the premises, it is ordered that a preliminary injunction issue upon complainant

entering security in the sum of twenty-five hundred dollars ($2,500).

103 And afterwards, to wit, on the 31st day of January, A. D. 1890, the court enters the following decree, viz:

United States Circuit Court, Eastern District of Penna., October Session, 1889.

MICHAEL HAUGHEY
vs.
JESSE LEE, LEWIS S. LEE, and WALTER LEE, Copartners Trading under the Firm Name and Style of Jesse Lee and Sons. } No. 10. In Equity.

And now, to wit, Jan'y 31st, 1890, on motion of Edward J. O'Brien, Esq., and Edward P. Bliss, Esq., of counsel for the complainant, upon consideration of the bill, answer, and affidavits filed on the part of the complainant and of the defendants, and of the depositions taken by the parties before Joshua Pusey, Esq., the special examiner appointed by the court, and after full argument by counsel for the complainant and the defendants respectively, it

104 is hereby ordered, adjudged, and decreed that a preliminary injunction enjoining and restraining said defendants, their servants, attorneys, and agents, and each of them, in accordance with the prayer of the bill, do issue upon complainant's filing a bond in the sum of two thousand five hundred dollars conditioned to answer all damages which the said defendants may sustain in consequence of said injunction being granted in case the same be hereafter dissolved.

(Endorsed:) No. 10. Oct. sess., 1889, C. C. U. S., E. D. of Pa. Haughey *vs.* Lee *et al.* Decree for pre. inj. Filed Jan. 31, 1890.

105 And afterwards, to wit, on the 31st day of January, A. D. 1890, the complainant, by his solicitors, come into court here and files his replication, which, being read, is in the words and figures following, viz:

In the Circuit Court of the United States, Eastern District of Pennsylvania, October Session, 1889.

MICHAEL HAUGHEY, Complainant,
vs.
JESSE LEE, LEWIS S. LEE, and WALTER LEE, Copartners Trading under the Firm Name and Style of Jesse Lee & Sons, Defendants. } No. 10. In Equity.

Replication.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain and sufficient in law to be an-

swered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, can and will be, ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by his said bill he hath already prayed.

E. J. O'BRIEN AND
EDWARD P. BLISS,
Attorneys and of Counsel for the Complainant.

(Endorsed:) Circuit court of the United States, eastern district of Penna., Oct. sess., 1889. No. 10. In equity. Michael Haughey *vs.* Jesse Lee & Sons. Replication. Filed Jan. 31, 1890.

106 And afterwards, to wit, on the 7 day of March, A. D. 1890, the defendants, by their solicitor, comes into court here and files an amendment to their answer, which, being read, is in the words and figures following, viz:

In the Circuit Court of the United States, Eastern District of Pennsylvania.

MICHAEL HAUGHEY *vs.* JESSE LEE *et al.* } In Equity. October Session, 1889. No. 10.

Amendment to Answer.

After the words "known to and used by the following-named persons, at the following places respectively, to wit:" lines 16 and 17, of page 4 of the defendants' answer, insert the following: "Solomon Gilbert, of and at Norristown, Pennsylvania; John Hunter, of and at Philadelphia, Pennsylvania, and Stote Clark, of and at Broad Ax, Montgomery county, Pennsylvania."

ERNEST HOWARD HUNTER,
Counsel for Respondents.

(Endorsed:) No. 10. October sess., 1889. C. C. U. S., E. D. of Pa. Haughey *vs.* Lee *et al.* Amendment to answer. Filed Mar. 7, 1890.

107 And afterwards, to wit, on the 25th day of March, A. D. 1890, the defendants, by their solicitor, comes into court here, and, leave of the said court being first had and obtained, files their amendment to their answer, which, being read, is in the words and figures following, viz:

In the Circuit Court of the United States, Eastern District of Pennsylvania.

MICHAEL HAUGHEY
vs.
JESSE LEE, LEWIS S. LEE, and WALTER LEE, Copartners Trading under the Style and Firm Name of Jesse Lee & Sons, Defendants.
} In Equity. October Session, 1889. No. 10.

Amendment to Answer.

After the words "known to and used by the following-named persons, at the following places, respectively, to wit:" lines 16 and 17, of page 4 of the respondents' answer, insert the following: "Thomas Miller, of and at Philadelphia, Pennsylvania; The Thirteenth and Fifteenth Streets Railway Company, of and at Philadelphia, Pennsylvania."

ERNEST HOWARD HUNTER.

(Endorsed:) No. 10. October sess., 1889. C. C. U. S., E. D. of Pa. Haughey *vs.* Lee *et al.* Amendment to answer. Filed Mar. 25, 1890.

108 United States Circuit Court, Eastern District of Pennsylvania, October Session, 1889.

MICHAEL HAUGHEY, Complainant,
vs.
JESSE LEE *et al.*, Defendants.
} In Equity. No. 10.

Please take notice that the complainant desires the testimony in this case to be taken orally, and that the witnesses on behalf of the said complainant will be examined before a competent officer, at the office of E. J. O'Brien, Esq., No. 14 North Fourth street, in the city of St. Louis, Mo., on Friday, the seventh day of February, 1890, at ten o'clock in the forenoon, and the taking of testimony
109 will proceed thereafter at the times and places to which the said examination may be duly adjourned.

E. J. O'BRIEN,
EDWARD P. BLISS,
Solicitors for Complainant.

To E. H. Hunter, Esq., solicitor for defendants.

Service duly accepted.

EDWARD H. HUNTER,
For Defendants.

United States Circuit Court, Eastern District of Pennsylvania.

MICHAEL HAUGHEY, Complainant, vs. JESSE LEE *et al.*, Defendants. } October Sess., 1889. No. 10. In Equity.

Testimony in Behalf of the Complainant, Taken Before Charles E. Weller, United States Commissioner within and for the Eastern Division, Eastern District of Missouri.

Present: E. J. O'Brien, on behalf of the complainant, and E. H. Hunter on behalf of the defendants.

MICHAEL HAUGHEY, being duly sworn on behalf of the complainant, testified as follows:

110 1 Int. Please state your name, age, residence, and occupation.

A. My name is Michael Haughey, age about 49, residence No. 4036 Easton avenue, St. Louis, Missouri; occupation, livery and undertaker.

2 Int. You are the complainant named in this suit?

A. I am.

3 Int. Do you know the defendants, Jesse Lee and Sons?

A. I know of them; not acquainted with them.

4 Int. How long have you been engaged in the livery business, or business connected with horses and vehicles?

A. Since 1865.

5 Int. In this city?

A. Yes, sir.

6 Int. Are you the Michael Haughey who is the inventor and patentee in the United States letters patent, numbered 379,644, dated March 20th, 1888, for a new and useful improvement in interfering devices for horses?

A. I am.

7 Int. Are you still the owner of those letters patent?

A. Yes, sir.

8 Int. And have been ever since they were granted?

A. Yes, sir.

9 Int. Since the grant of these letters patent, what, if anything, have you done towards introducing them to public use and placing them upon the market? State generally and briefly.

A. I have caused a great many of them to be made and distributed; sold a great many, and have established agencies in the principal cities of the country and had it extensively advertised in trade and local journals.

111 10 Int. In what cities have you established agencies for this device?

A. In Philadelphia, Milwaukee, Chicago, Sacramento, New Orleans and St. Louis.

11 Int. About how many of them have you had placed in use, or how many of them have been used under your letters patent since the issuance thereof? State approximately.

A. Well, I think possibly about ten thousand. Between eight and ten thousand. I couldn't exactly state the precise number because I distributed a great many without keeping any account of them.

12 Int. Are these the original letters patent granted to you to which you have alraady referred in your testimony and which I now hand you for identification?

Here counsel for complainant hands witness the original letters patent numbered 379,644, dated March 20th, 1888.

A. Yes, sir, they are.

At this point it is stipulated by counsel that United States Patent Office copies uncertified may be used with the same force as certified copies thereof.

Counsel for complainant here introduces in evidence a copy of the original letters patent numbered 379,644, and asks the commissioner that the same be marked "Complainant's Exhibit Complainant's Patent."

13 Int. I will ask you to examine this interfering device or horse boot which I now hand to you and ask the commissioner that the same be marked "Complainant's Exhibit Complainant's
112 Device," and ask you if that is made according to the specifications and claim of your patent referred to herein?

Question objected to as incompetent, in that it calls upon the witness to give expert evidence.

A. Yes, sir.

14 Int. You recognize it as embodying the principles and elements of your patent herein referred to?

A. Yes, sir, I do.

15 Int. I will ask you if you have prior to the bringing of this suit against these defendants in this suit caused any other legal proceedings anywhere to be instituted in the United States circuit court in equity for alleged infringement of your patent herein; if so, against whom, and where?

Question objected to as irrelevant and immaterial. What the complainant has done against other parties or in other States having no relevancy whatever to the present cause.

A. I have instituted proceedings against the Mound City Coupe Company of St. Louis, Missouri.

16 Int. In what court?

A. In the United States circuit court for the eastern district of Missouri.

17 Int. Did that suit result in a decree or not?

A. It resulted in the defendants confessing judgment and settling for the damage they had done.

Complainant's counsel here offers in evidence decree of the United States circuit court, eastern division of the eastern district of Missouri, in equity, numbered 3052, entitled "Michael Haughey *v.* The

Mound City Coupe Company," and asks that the same be marked "Complainant's Exhibit Former Decree."

113 Said exhibit is objected to as irrelevant and immaterial.

18 Int. Have you known of these defendants Jesse Lee & Sons manufacturing a boot like or similar to that covered by your patent herein?

A. Yes, sir.

19 Int. I will ask you to examine an interfering device for horses marked "W, E. J. O'B, 10-23-89, bought, of Jesse Lee & Son, per Lewis S. Lee," and having done so, state when you first saw that device.

A. This device I first saw in the city of Philadelphia on the 23d of October last.

20 Int. How long have you been familiar with horse boots?

A. For about twenty-five or thirty years.

21 Int. What has been the nature of your experience with that class of articles?

A. I have seen a great many different kinds of boots used on horses, principally for protecting the parts liable to be struck or bruised.

22 Int. Having reference to comparing the device marked "W" which you hold in your hand and which complainant's solicitor now offers in evidence and asks the commissioner that the same be marked "Complainant's Exhibit Defendants' Device," can you tell whether or not that device which you hold in your hand is an infringement of your patent and of the device herein marked "Complainant's Device"?

Objected to as incompetent, first, because the witness is not qualified to give expert testimony, and second, because if he were it is not within the province of a witness to say whether or not one
114 device is an infringement of another, that being the province of the court alone; the question is therefore wholly improper and incompetent.

A. Yes, sir; I hold that this is a very positive and flagrant infringement of my patent.

23 Int. What is the purpose for which that device that you hold in your hand is used?

A. To keep horses from interfering; to keep them from striking one leg with the other or one foot with the other.

24 Int. What features in it do you recognize as belonging to your patent?

A. The pendant, and the swinging motion.

25 Int. Have you known of the defendants issuing any printed cards or circulars covering the device which you hold in your hand?

A. Yes, sir.

26 Int. Do you recognize this printed card that I now hand you as being such?

A. Yes, sir.

Plaintiff's counsel here offers in evidence printed card having cut of an interfering boot, signed "Jesse Lee & Sons, No. 37 South Fourth street, Philadelphia," and offers the same in evidence and asks the commissioner to mark it "Complainant's Exhibit Defendants' Circular."

27 Int. To what extent, if any, that you know of, have the defendants been placing the Busch dangled boot, so called in this case, on the market?

A. They have placed them extensively in the city of Philadelphia, and they have sent agents through the country. I have found them here in St. Louis, heard of them, rather, in St. Louis and in Chicago, and I think in Milwaukee; I won't be positive
115 about Milwaukee, but I judge that they have sent them out with their agents all over the country.

28 Int. When did you first become advised of their placing those boots upon the market?

A. About the first of last October, as near as I can recollect.

29 Int. What has been the effect of their placing their goods upon the market on your patent, if any?

A. Well, it has reduced the sales from what they have been in former years.

30 Int. I will ask you to examine this dangle-boot which I now hand you, and which complainant's counsel asks the commissioner to be marked Exhibit "Defendants' Device B," and state, if you know, what that is.

A. This is another form of the same device.

31 Int. Made by whom, if you know?

A. Made by Jesse Lee & Sons.

32 Int. And sold to whom, if you know?

A. Sold to Leopold Meyer, St. Louis, Missouri.

Answer objected to as incompetent.

33 Int. With reference to Complainant's Exhibit "Defendants' Device," what is that device which you hold in your hand?

A. This is an interfering device for horses.

34 Int. Like, or otherwise?

A. It is the same as this.

35 Int. Same as defendants' device?

A. Yes, sir.

Cross-examination:

1 X Int. You say that you are acquainted with horse boots
116 or interfering devices in which the object is principally to protect the parts liable to be struck. Are you acquainted with any interfering devices for horses other than the so-called "Haughey" and "Busch" boots, in which the evil of interfering is cured or prevented in any other way than by simply protecting the part liable to be struck.

A. No, sir, not if I understand your question right.

2 X Int. I want to know if you know any other horse boots

which are used for the purpose of preventing or curing interfering in which the object was not simply to protect the parts from being struck?

A. No, sir.

3 X Int. Is the object of your boot to protect the parts from being struck?

A. No, sir; the object of my boot is to spread the horse's gait so that he does not strike by reason of his traveling wide.

4 X Int. How is that accomplished?

A. That is accomplished by the boot being strapped to the horse's leg, by this pendant being strapped to the horse's leg, and in the movement of the horse's foot forward the pendant strikes the horse's leg on the opposite side in its passage by it, and when the foot or leg that the boot is attached to strikes the ground it generally taps the horse on the same leg, thereby reminding him at every step that there is something there that he wants to avoid.

5 X Int. Prior to your alleged invention of the so-called Haughey boot did you ever hear of any other interfering device which was so constru-ed as to strike or gently tap the opposite leg of the horse if he carried his legs to- close, and thereby cause
117 him to travel with his legs farther apart, or spread his gait?

A. Nothing of this kind.

6 X Int. Of any other kind?

A. There has been a projecting ring or flange that was used more as a buffer, and not extending far enough over the joint to touch the opposite leg in contact.

7 X Int. Have you made a study of the various interfering devices for horses as exhibited in previously granted patents?

Objected to as improper at this stage of this case and not involving matter-in-chief, but appertaining purely to the state of the arts which is a matter of defence under the answer of the defendants.

A. Not particularly so, except as I have come in contact with them; see them in use.

8 X Int. Is it not a fact that you claim in your patent to be the inventor of an interfering device consisting of a pendant loosely jointed to a strap passing about the leg of a horse?

A. Yes, sir.

9 X Int. Will you show me in the devices which you have stated you understand are made by the defendants, wherein you find a pendant loosely jointed to a strap passing about the leg of a horse?

A. This is a pendant (indicating by defendants' device); this is a pendant attached to this strap that goes around the horse's leg.

10 X Int. Which is the pendant?

A. This part here.

11 X Int. Do you mean the balls?

A. The whole thing connected from this point here is the pendant.

12 X Int. From what point?

118 A. From the point here; from this plate, from the pad. It is pendant from that.

13 X Int. Where is it loosely jointed to the leg strap?

A. The fact that the strap is loosely jointed by passing through the hole in the pad.

14 X Int. Supposing the pad was taken off, and there was no hole there; would it be loosely jointed then?

A. Yes, sir; by reason of the flexibility of the leather or strap.

15 X Int. What do you understand "loosely jointed" to mean?

A. I mean anything that will vibrate or move.

16 X Int. Have you ever heard the words "loosely jointed" used in that sense before?

A. I can't say that I have. I may have, but without paying any attention to it.

17 X Int. Does not the pendant in your device strike both legs of the horse, that to which it is attached as well as the opposite leg?

A. Yes, sir.

18 X Int. Is not this due to the fact that it is a pendant?

A. Yes, sir.

19 X Int. If it were not a pendant it would not strike both legs of the horse, would it?

A. Not if it was not a pendant. If it was not a loose pendant it would not strike both legs.

20 X Int. Is not this due to the fact that it is able to swing in all directions?

A. Undoubtedly.

21 X Int. Is it not a fact that it is able to swing in all directions because it is loosely jointed to the strap?

A. Yes, sir.

22 X Int. You do not claim to have invented an interfering device in which the striking portion projects laterally, and does not depend, do you?

119 Objected to as incompetent, the patent being the best evidence.

A. I claim this: That I have invented an interfering device that can be made a pendant, or is a pendant, and can, if so desired by the user, be held to a right-angular position if he so desires it.

23 X Int. When it is so held in what you call a right-angular position, is it a pendant?

A. Not when it is held in a right-angular position, and maintained in that position, it would not be a pendant.

24 X Int. Why would it not be a pendant?

A. It would not be a pendant in a right-angular position, but if it departs from a right-angular position, then it would be a dependant, or a pendant.

25 X Int. Please explain why it would not be a pendant when in a right-angular position, and why a pendant when it departs from the right-angular position?

A. That is a pendant (indicating the pendant hanging down ver-

tically), if that was supported in that position (holding it horizontally), it would be a right-angular position.

26 X Int. Supposing it were in a position midway between the vertical position which you have described as being a pendant, and the horizontal position which you have called a right-angular position, and say would not be a pendant, so that it did not assume, and could not assume a vertical position or strike the leg by which it was carried, would it then be a pendant?

A. Yes, sir; it would be a pendant in proportion to the extent that it deviated from a right angle.

120 27 X Int. Then, it would only be partially a pendant?

A. In proportion to the extent that it departed from a right angle.

28 X Int. Why do you use a pendant, and not a laterally projecting part?

A. Because that I believed that it was the most suitable for the purpose intended, and found it to be so.

29 X Int. What additional result does it perform when it is pendant that it does not perform when it is at a right angle or nonpendant position?

A. Well, for the reason that it communicates the fact that the horse is touched on both legs, on the leg opposite to the one that it is fastened to, and on the one that it is fastened to when the foot comes down.

30 X Int. Then, the only function which it has in being made a pendant over what it would have when it was not pendant, is that it strikes the leg to which it is attached in addition to the opposite leg?

A. Exactly.

31 X Int. That is what you mean by calling it a pendant, is it not?

A. Why, it is evident that it is a pendant. I couldn't call it anything else but a pendant.

Redirect examination:

36 Int. In your cross-examination you said that your idea of a loose joint was anything that would vibrate or move. Was that answer made in reference to the exhibits you held in your hand at the time?

A. Yes, sir.

37 Int. And not to anything else?

A. No, sir.

121 Recross-examination:

32 X Int. What does the word "joined" mean?

A. Coupled together, or placed together.

33 X Int. Did you ever hear of joining or coupling together a continuous unbroken thing, just one thing by itself?

A. No, I can't see how one continuous thing could be joined together.

MICHAEL HAUGHEY.

Subscribed and sworn to before me this 13th day of February, A. D. 1890.

CHAS. E. WELLER,
United States Commissioner, Eastern District of Missouri.

CHARLES PICKLES, being duly sworn on behalf of the complainant, testified as follows:

1 Int. State your name, age, residence and occupation.

A. My name is Charles Pickles; residence, St. Louis; occupation, draughtsman and expert; age, 40 years.

2 Int. What experience as a mechanical engineer and draughtsman have you had; covering what length of time, and what is its general nature?

A. Designing and constructing machinery, superintending of the same, making Patent Office drawings, examining patents as to their validity and scope, and testifying as an expert in patent cases.

3 Int. Where and in what places have you had the experience you have just narrated?

A. Principally in St. Louis.

122 4 Int. For how long?

A. About twenty years.

5 Int. You may state if you have examined and understand United States letters patent numbered 379,644, granted to Michael Haughey, of St. Louis, Missouri, March 20th, 1888, for a new and improved device to prevent interfering in horses.

A. Yes, sir; I have examined it and understand it.

— Q. Are you familiar with the drawings of that patent?

A. Yes, sir; I made those drawings from the model furnished me by Mr. Haughey.

7 Int. I will ask you to examine Complainant's Exhibit "Complainant's Device," and get you to state whether or not you recognize that exhibit as embodying the principles and features of the Haughey patent in suit.

A. Yes, sir; the same as that shown and described in the patent.

8 Int. What are the features of that patent, Mr. Pickles, as you recognize them?

A. The strap encircling the leg and the pendant extending therefrom and adapted to loosely swing.

9 Int. I will ask you to examine the Complainant's Exhibit "Defendants' Device," and having done so to state whether or not, in your opinion, it embodies the patented features of the complainant's patent, and if your answer is yes, please state wherein you find those features in that device.

A. The device is the same as that described in the Haughey patent, consisting of a pendant and strap encircling the leg, said parts loosely connected.

10 Int. Loosely connected for what purpose?

A. For the purpose of allowing a free movement of the pendant.

123 11 Int. Should you say that that device marked "defendants' device" was loosely jointed in its pendant connection with the strap around the horse's leg?

A. The pendant is loosely jointed to the strap encircling the leg.

12 Int. Can you explain by this diagram, which I will now show you, the points wherein the loose jointure of that device is represented?

Here plaintiff's counsel shows the witness pencil drawing, and asks the commissioner to mark the same "Complainant's Exhibit Pickles' Testimony A."

A. In the sketch shown a portion of the strap is illustrated by the letters "*b b*." Another portion of the strap, or continuation of the same, marked "*c*," by the joint suspending the pendant is marked "*a*," the division between the strap encircling the leg and the part "*a*," indicated by dotted lines and marked "*d*."

13 Int. Why do you ascribe to that portion of that diagram the elements and capacities in that construction for operating as a loose joint?

A. The parts marked "*b b*" are drawn tight around the leg, a portion of the strain being taken by the pad "*c*," and no part of it by the joint "*a*." They merely serve as a connection between the strap, and serve the purpose of holding the pendant balls, while the part "*c*" serves as a continuation of the strap.

14 Int. What material in the defendants' device is that connection made of as illustrated in the diagram?

A. In the defendants' device that material is the same as the part marked "*b*."

15 Int. What is it?

A. A leather.

124 16 Int. Does the material cut any figure in your mind in determining the question of being loosely jointed?

A. It does not.

17 Int. Calling your attention now to defendants' device "B" in evidence, I will ask you to compare that with the "defendant's device," and state what, if any, difference you find in the construction and operation of that device as an interfering boot.

A. I find in this the same construction as to strap encircling the leg, pad, and flexible joint, the only difference being in the shape of one of the balls forming the pendant.

18 Int. Does that change make any difference in the operation between the two devices?

A. The operation is the same.

19 Int. Do you find the elements of the Haughey patent in both of these devices as covered by his claim, namely, "An interfering device, consisting of a pendant made of rubber, loosely jointed to a strap passing around the leg of a horse"?

A. I do.

20 Int. Should you say, as an expert in matters of this character, that the elements of the Haughey patent in controversy were sub-

stantially reproduced in the defendants' devices, to which your attention has been directed?

A. Substantially the same device.

21 Int. You have no interest other than as a witness in this case; no interest in the subject-matter of this suit?

A. None whatever.

22 Int. You don't know the defendants personally?

A. I do not.

Cross-examination:

1 X Int. Are you a mechanical engineer?

125 A. I have done something in that line of business; yes sir, as far as the inspection of machinery is concerned.

2 X Int. Are you technically educated as a mechanical engineer?

A. I am not. I don't carry the "M. E."

3 X Int. Have you ever attended a school where you received instruction in the mechanical sciences?

A. I have not.

4 X Int. In how many patent cases have you testified as an expert?

A. That is pretty hard to tell. Quite a number of them.

5 X Int. Can you tell approximately?

A. Perhaps a dozen.

6 X Int. What was the last case in which you testified before this?

A. It was a case of a man named Holsdorfer against a St. Louis party.

7 X Int. Was it a patent case?

A. A patent case.

8 X Int. In the United States court?

A. In the United States court, in this district.

9 X Int. What is a pendant?

A. A pendant is something suspended below a horizontal line. That is the definition of it as is used in expressing a construction in machinery.

10 X Int. Where did you obtain that definition?

A. By usage.

11 X Int. Can you refer to any technical work or dictionary in which you find such a definition?

A. I don't know as I can.

12 X Int. Is it necessary that a pendant should be suspended, as you call it?

A. It should hang down, placed.

126 13 X Int. What do you mean by "hang down"?

A. The portion to which the pendant is secured must be at an elevation above the pendant.

14 X Int. Would a laterally projecting piece rigidly secured to a vertical rod deflecting one second below a horizontal plane be a pendant?

A. It might be considered so.

15 X Int. Would you consider it so?

A. Not necessarily.

16 X Int. Why would it not necessarily be a pendant?

A. Some might call it a pendant and some might call it a lateral projection.

17 X Int. Are lateral projections and pendants the same?

A. No, sir.

18 X Int. What is the difference?

A. One is supposed to project in a horizontal line from something else.

19 X Int. Need a lateral projection be in a perfectly horizontal plane?

A. Yes, sir.

20 X Int. What is your authority for that?

A. It is not a lateral projection unless it is.

21 X Int. What does the word "lateral" mean?

A. I don't propose to be a dictionary.

22 X Int. Returning again, supposing one part is secured to a vertical piece deflecting, as I said before, one second from a horizontal plane, would that be a pendant in your opinion?

A. If anybody were to ask me to describe it, I should say a lateral projection depending downward.

23 X Int. Then you wouldn't call it a pendant?

A. Not necessarily.

24 X Int. Would you call it a pendant at all?

A. That would be my description of it.

127 25 X Int. What?

A. A lateral projection depending downwards.

26 X Int. But not a pendant?

A. Not necessarily.

27 X Int. Why not necessarily? Why do you use the term "not necessarily"? I want to know whether it would be a pendant or would not be a pendant?

A. I have answered that question.

28 X Int. Do you refuse to say whether or not such a construction would constitute a pendant?

Objected to as being improper, as the witness has made no refusal but on the contrary has endeavored to answer very voluble questions put by counsel.

A. I have answered that question.

29 X Int. Am I to take your answer to be that you would not call it a pendant?

A. Take my answer to be just what my answer was.

30 X Int. Why do you use the words "not necessarily" in your answer?

A. Circumstances would require you to give a description of such an object.

31 X Int. Supposing that object were a stem covered with rubber balls, would it then be a pendant?

A. What direction would the stem be in?

32 X Int. As in my former example, it is attached to a vertical object; it is not in a perfectly horizontal plane but is deflected in the smallest degree, I will put it one second.

A. All right. It is a lateral projection depending downwards.

33 X Int. Then it is not a pendant; is this correct?

A. It is a lateral projection depending downward. A pendant to speak of generally would mean something that hung below 45 degrees.

128 34 X Int. Then it would not become a pendant in your opinion until it deflected to such an extent that the angle of deflection were greater than 45 degrees. Is this correct?

A. If a person should ask me was it a pendant, or what was a pendant, to give a general description, I should say "something that hangs downward."

35 X Int. That hardly answers my question (previous question read to the witness).

A. In mechanics or descriptions of machinery when we say anything is a pendant, that is, pend*a*nt or depend*a*nt, it is generally understood that it hangs down. It does not necessarily confine it to any particular angle.

36 X Int. Will you give me some example in mechanics of the use of the word "pendant" in which the so-called pendant is supported by an object in an angular position and in which the object does not hang down vertically?

A. In machine shops pendants are used for supporting shaftings, being secured to any object either horizontally or vertically, and hang down beneath the object to which they are secured. That may be seen in almost any machinery.

37 X Int. Is it not the usual position for them to hang down vertically, and would they not always hang down vertically unless it were more convenient to support them for various reasons in other positions, so far as you are aware?

A. It would be more convenient for them to hang vertically. Sometimes circumstances compel them to be hung at an angle other than vertical.

129 38 X Int. This is the only example that you can remember at the present time of such a use of the word "pendant," is it?

A. Some people have watches and chains; the ornaments that are hung from those chains, say a locket or anything else, are called pendants.

39 X Int. Do they not hang vertically?

A. They hang in all sorts of angles.

40 X Int. Don't they hang by gravity?

A. They do.

41 X Int. Is it not essential to the Haughey invention that the striking portion shall be a pendant, as you understand the letters patent of Haughey in suit?

A. Yes, sir.

42 X Int. Is it not essential that that pendant should be loosely jointed to the strap encircling the leg?

A. To follow the meaning of the patent it is necessary that it should be loosely jointed to the part from which it is suspended.

43 X Int. What function is obtained by this loose junction, or jointing?

A. The universal movements or movement in all directions of the pendant radially.

44 X Int. Is that what you call a universal movement?

A. Universal movement. Moves in all directions.

45 X Int. Then it is essential that it shall move vertically or in a vertical plane, or substantially vertical plane?

A. The outer end of the pendant may move in a vertical plane or in a horizontal plane.

46 X Int. What difference in function is there when the striking portion is formed as a pendant or depending portion loosely
130 jointed to the leg strap with freedom of universal radial movement over a construction in which the striking portion is a lateral projection with a limited freedom of movement in a horizontal or substantially horizontal plane? By "difference in function," I mean in the result produced, so far as the object of the device for the purpose of curing and preventing interfering is concerned.

A. In one case, that is, where the projection is lateral, the lateral projection would strike the foot that was still while the foot carrying said projection was in motion, while in the Haughey case the pendant having a free movement will strike perhaps one or both feet.

47 X Int. Then, as I understand it, the only difference is that the loosely jointed pendant allows a striking of the leg to which the device is attached as well as the other leg. Is this correct?

A. That is correct.

48 X Int. Do you understand this to be the object of constructing the device of the Haughey patent in the manner described, that is to say, with a leg strap and a pendant loosely jointed thereto?

A. In the Haughey patent it is so described.

49 X Int. In the devices marked "Complainant's Exhibit Defendants' Device B" and "Plaintiff's Exhibit Defendants' Device," will you point out where you find the feature of the loose joint referred to in the Haughey patent in suit and more particularly pointed out in the claim thereof, referring if you wish to the diagram?

A. In referring to the diagram, such part of leather as is between the top of the ball marked "*c*" and the dotted lines or
131 sti-ches marked "*d*" serves as a loose joint between the strap and the pendant.

50 X Int. What are the parts marked "D"?

A. The parts marked "*d*" are the stitches securing the strap, partially encircling the leg to the pad.

51 X Int. Supposing all of the balls, including the ball which you have marked "*c*," were removed from the parts of the strap marked "*a*," where would the loose joint then be?

A. The loose joint would still be in the same place, but that part of the strap from the joint down would serve as the pendant.

52 X Int. Then the joint would be at the stitches, would it not?

A. Then the joint would be at the stitches.

53 X Int. Supposing the stitches were removed, where would the joint then be?

A. The joint would then be at the buckle. It would be a continuous strap.

54 X Int. Then the pendant would not be loosely jointed to the strap?

A. In that case there would be no pendant.

55 X Int. Suppose we left the balls on and removed the stitches, then where would the loose joint be?

A. There would be no loose joint without the strap was secured to something.

56 X Int. If, then, the strap carrying the balls is unsecured to anything throughout its entire extent there would be no pendant loosely jointed to the leg strap, would there?

A. To have a pendant it is necessary that the strap should be secured to something.

57 X Int. Why so?

A. The strap and what is considered the pendant or called
132 the pendant would all be a pendant if it hung loose from its point of suspension.

58 X Int. Supposing a portion of the strap encircles the leg of a horse and another portion of the strap is formed into a loop, and on the loop there are placed balls, where is the loose joint?

A. The loose joint in that case would be where that part of the strap leaving the horse's leg was joined to the ball.

59 X Int. What would the loose joint be between? What parts would be jointed together?

A. The part encircling the leg and the part sustaining the balls; a portion of the strap furnishing the loose joint.

60 X Int. Is it not essential in order to join things together or to form a loose joint between two parts that they shall be separated one from another?

A. Not necessarily.

61 X Int. Can you give an example of such a loose joint?

A. Rubber is treated in that way; where it is one continuous piece one portion of which would be flexible and the balance would be rigid.

62 X Int. Do you understand then that loosely jointed and flexible are the same?

A. Identically the same in this case.

63 X Int. Why "in this case"?

A. It is for a particular purpose, of allowing a free movement of a pendant on the horse's leg.

64 X Int. In both a horizontal and vertical plane?

A. A free movement, universal movement. Such position as it might assume.

65 X Int. In order that it might strike both legs of the
133 horse?

A. In order that it might strike both legs or one leg.

66 X Int. Would it be loosely jointed if it only struck one leg?

A. It might be loosely jointed; in this case it is loosely jointed. It may only strike one leg.

67 X Int. You have stated that the Haughey device strikes both legs and that it is loosely jointed for this purpose?

A. As I said, it might strike one leg and it might strike both.

68 X Int. But the object of making it loosely jointed is so that it can strike both. You have stated that that is the only difference in function in making this device pendant and loosely jointed over one in which it has a lateral projection with freedom of movement on a horizontal or substantially horizontal plane?

A. Where it is loosely jointed it is liable to strike one leg or it is liable to strike both legs. The construction permits of it doing either or both.

69 X Int. Then, in order to have a loose joint you must have such a construction as will permit it to do either; that is to say, it must be a universal joint?

A. A joint that will admit of a universal movement; free movement.

70 X Int. Does the flexibility in a piece of rubber or between two portions of a piece of rubber permit necessarily a universal movement?

A. If the rubber is soft, forming the connection between the other parts, it will admit of a universal movement, horizontally, vertically or radial, or a circling movement.

71 X Int. Then the flexibility in a piece of rubber or
134 similar material would not be the equivalent in your opinion of a loose juncture or connection of two parts together, except when it possessed such a degree of flexibility as would allow that universal movement? Is not this the way that I am to understand your answers?

A. If the rubber possesses such degree of flexibility the result will be the same.

72 X Int. If it did not possess such a degree of flexibility the results would not be the same; is that correct?

A. That is correct.

73 X Int. Have you ever seen the alleged defendants' device in regard to which you have been testifying or similar devices in operation?

A. I have not.

74 X Int. In your opinion would it be possible for this striking portion during the motion of the horse to swing in a vertical plane? I now hand you these constructions, so that you can examine them.

A. Possibly in some horses the extreme end of the pendant might swing in a vertical plane, swinging from its juncture with the strap encircling the leg.

75 X Int. Possibly in some horses?

A. In some horses. Take a pacing horse, for instance.

76 X Int. Will you explain how this result could be obtained?

A. If the horse throws its leg out the pendant will swing in a vertical line.

77 X Int. What do you mean by "throws its leg out"?

A. That is, on the inside of the leg. Pacing horses always throw their legs out.

78 X Int. Will you examine the construction exhibited in defendants' device "B" and say whether or not it is possible in the construction of that device for the striking portion to strike
135 the leg to which the apparatus is attached while the horse is in motion?

A. The strap or the pendant beneath the flexible joint is pliable, and it might deflect a sufficient distance to strike the foot or leg to which it is secured.

79 X Int. You have never seen it in operation?

A. I have not.

80 X Int. But it is your opinion that this function if possible could only be accomplished because of the pliability of the pendant?

A. In this particular case, yes.

81 X Int. What would cause the pendant, being pliable, to bend to such a degree as would be necessary to accomplish that object?

A. The momentum imparted to it by the movement of the horse's foot or leg.

82 X Int. Am I to understand that you are of the opinion that the motion of the horse's leg in carrying this device will impart such a motion to the pendant below, what you call the flexible joint, so as to cause it because of its pliability to deflect or bend to such a degree as to curve around and strike the leg to which the device is attached?

A. All such parts of the pendant that is flexible would deflect, and if the momentum was sufficient it would strike the horse's leg.

83 X Int. Would not the upper ball act as an obstruction to prevent that?

A. No.

84 X Int. Why not?

A. As I say, if the momentum was sufficient the upper ball in that construction is of a flexible material in itself; it would give a portion of the distance.

136 85 X Int. In what direction would the momentum act?

A. In the direction of the horse's travel.

86 X Int. Of the travel of the horse, or leg?

A. The horse and leg travel in the same direction.

Redirect examination:

23 Int. Mr. Pickles, about how many separate original patent drawings have you made in your experience?

A. Perhaps ten thousand.

CHARLES PICKLES.

Subscribed and sworn to before me this 19th day of February, A. D. 1890.

CHAS. E. WELLER,
U. S. Commissioner.

NOTE.—It is admitted by counsel for the defendants that the device heretofore introduced in evidence and marked "Plaintiff's Exhibit Defendants' Device" was purchased from the defendants and *were* made and sold by the defendants prior to the institution of this suit.

UNITED STATES OF AMERICA, }
Eastern Division and District of Missouri, } *ss:*

Pursuant to the above notice there was produced before me the following-named witnesses, to wit: Michael Haughey and Charles Pickles, who being by me first duly sworn according to law
137 gave their testimony as hereinbefore recorded, and the same by agreement of counsel being taken in short-hand notes by me was transcribed into written interrogatories and answers, and signed and the signature of each witness sworn to before me at the times hereinbefore stated, and I hereby return the same to the court with the papers and exhibits referred to in said testimony.

CHAS. E. WELLER,
[SEAL.] *United States Commissioner for the Eastern Division and Eastern District of Missouri.*

138 Compl't's Ex. Compl't's Patent. Charles E. Weller, U. S. Com's'r.

139 United States Patent Office.

Michael Haughey, of St. Louis, Missouri.

Interfering Device for Horses.

Specification forming part of Letters Patent No. 379,644, dated March 20, 1888. Application filed September 22, 1887. Serial No., 250,462. (No model.)

To all whom it may concern:

Be it known that I, Michael Haughey, a citizen of the United States, residing at the city of St. Louis, in the State of Missouri, have invented a new and useful improvement in devices to prevent horses interfering, of which the following is a specification.

My invention relates to an improvement in interfering straps or devices that are fastened on the horse's legs at or near the point where the horse may strike or interfere while moving about, usually above the pastern-joint; and the object of my improvement is, first, to provide against a horse striking or interfering, by means of a pendant that will move and swing freely between his legs from a loose joint at one or more points of attachment to a strap fastened around his leg; second, to provide means for holding the pendant on the horse's leg in any desired position that it may be placed in, and, third, to reduce the friction incidental to the act of striking. I attain these objects by the mechanism illustrated in the accompanying drawings, in which—

(Here follows diagram marked page 139.)

Figure 1 is a perspective view of my improvement, and Fig. 2 a similar view of the same, showing another form of swinging pendant.

Similar letters refer to similar parts in both figures.

Of the several modes of providing against the injury to an animal caused by repeated striking of the legs—the one against the other—and commonly called "interfering," the aim in all of them appears to be merely to afford protection to the parts of contact without regard to effecting a permanent cure, whereby the use of an interfering-strap will be rendered unnecessary. This latter object is attained by the use of my device, inasmuch as the motion of the horse's legs has the effect of giving to the pendant a swinging tangential motion, whereby the leg opposite to the one provided with my strap is touched before contact or conjunction of the two limbs with the pendant between, and the information thus communicated has the effect upon the horse of making him strive to avoid the touch of the swinging pendant. This he can only do by moving with his legs

(No Model.)

M. HAUGHEY.

INTERFERING DEVICE FOR HORSES.

No. 379,644. Patented Mar. 20, 1888.

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Fig. 1.

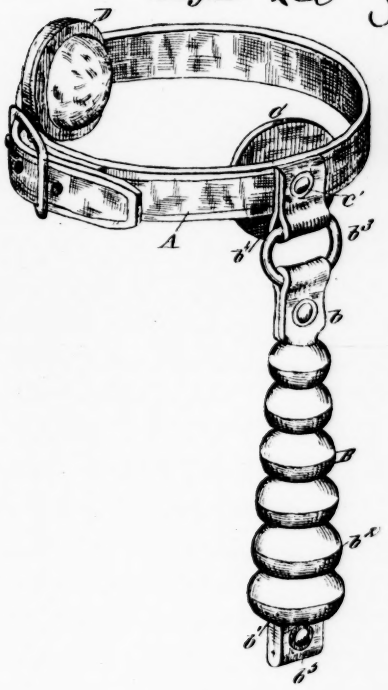
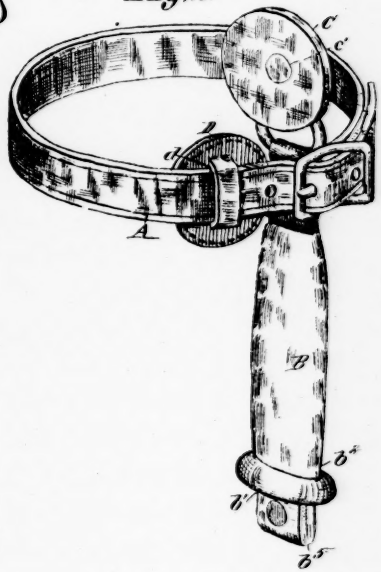


Fig. 2.



Attest:
Edward F. O'Brien
Charles Pickles,

Inventor:
Michael Haughey

spread sufficiently apart to avoid it, and in this way he soon loses the habit of striking.

In the drawings, A, Fig. 1, is a plain leather strap provided with an ordinary buckle or means for fastening the same around the leg of a horse. Upon the inside and near the buckle end of said strap I attach a small disk, C, made of leather or other suitable material, and fasten the same in place with the rivet c'. D is another disk similar to C, and facing on the inside of the strap A, to which it is attached by a loop, d, passing around said strap, or otherwise, so as to slide freely on the same. It is also padded or raised on the inside, so as to fit the depressions in the horse's leg, and thus hold the parts in place.

B is the pendant, which consists of the stem b^5, lugs b and b', ring b^3, and annular sections b^2. These annular sections have an opening in their middle to admit them on the stem b^5, and they may be made of rubber, leather, wood, or other suitable material. This form, however, is not essential, as the pendant may be made in one piece loosely fastened at the top. The upper end of the stem b^5 is lapped around the ring b^3 and fastened, and the whole is loosely attached to the strap A by a strip, b^4, passing around the ring b^3, and fastened to the strap A by the rivet c'.

Having thus fully described my invention, what I claim as new, and desire to secure by letters patent, is—

The interfering device consisting of the pendant made of rubber, wood, or other suitable material, loosely jointed to the strap passing around the leg of a horse, substantially in the manner shown, and for the purposes set forth.

MICHAEL HAUGHEY.

Witnesses:
THOMAS BLUNDELL.
EDWARD J. O'BRIEN.

140 UNITED STATES OF AMERICA, *Eastern Division of the Eastern Judicial District of Missouri*, } ss:

In the Circuit Court of the United States in and for the Eastern Division of said District.

Be it remembered that on the seventeenth day of October, A. D. 1889, the following, among other, proceedings were had and appear of record in said court, to wit:

MICHAEL HAUGHEY, Complainant,
vs.
MOUND CITY COUPE COMPANY, Formerly St. Louis Hansom Cab Co. (a Corporation), Defendant. } 3052.

This cause having come on to be heard on the pleadings and proofs herein, and it further appearing to the court that the said defendants consent to the entry of a decree against it, it is ordered, adjudged, and decreed by the court—

(1.) That the following letters patent of the United States,
141 to wit, letters patent No. 379,644, granted to the complainant March 20th, 1888, for a new and useful improvement in "interfering device for horses," are good and valid in law; that said Michael Haughey is the original and first inventor of the improvements and inventions described and claimed in said letters patent No. 379,644, and is now the sole owner thereof, as is alleged in his bill of complaint herein.

(2.) That said defendants, Mound City Coupe Co., as aforesaid, have infringed said letters patent No. 379,644 by making and using interfering straps or devices containing and embodying the improvements and inventions set forth and described in said letters patent, and that said defendants have violated and infringed upon the exclusive rights of the complainant secured to him and to his heirs, executors, administrators, and assigns in and by said letters patent in the manner set forth in the pleadings and proofs in this cause.

(3.) That the complainant is entitled to a discovery and accounting from said defendants of the gains and profits had and received by the defendants through their unlawful manufacture and use of said patent and invention or which have accrued to said defendants by their infringement of said letters patent.

142 It further appearing to the court that the parties have agreed upon the amount of gains, profits, and advantages received by the defendants and the damages sustained by the complainant from said infringement of said letters patent, to wit, $30.00, a reference to a master is hereby waived and this decree is made final.

(4.) It is further ordered, adjudged, and decreed by the court that the defendant, The Mound City Coupe Company, a corporation, and each of its servants, agents, assigns, employees, and successors be, and they are, perpetually restrained and enjoined from manufacturing, using, and selling any interfering device or strap for horses containing any of the inventions described and claimed in said letters patent No. 379,644 during the life of said letters patent, and that an injunction issue accordingly.

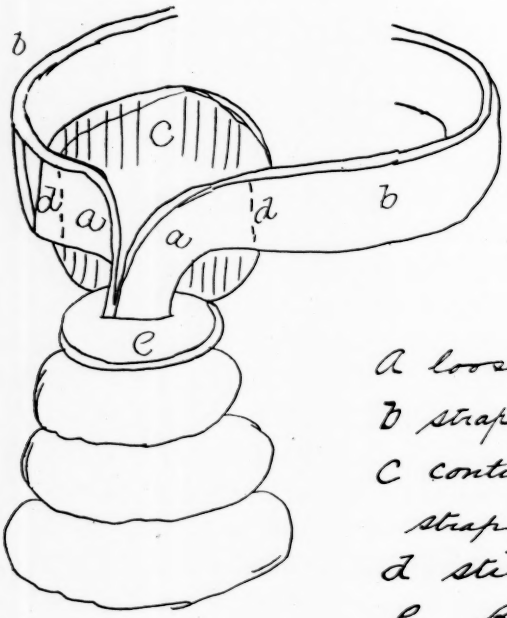
(5.) It is further ordered, adjudged, and decreed that the complainant recover of the defendant damages as aforesaid in the sum of $30.00, together with his costs in this suit to be taxed.

(Signed) AMOS M. THAYER, *Judge.*

143 UNITED STATES OF AMERICA, }
Eastern Division of the Eastern } *ss:*
Judicial District of Missouri. }

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify the writing hereto attached to be a true copy of final decree (dated October 17th, 1889) in case No. 3052, of Michael Haughey, plaintiff, against Mound City Coupe Company, defendant, as fully as the same remains on file and of record in said case in my office.

No. 189.
Haughey
v.
Lee
} P. 146.



a loose joint
b strap around leg
c continuation of strap or pad
d stitches
e Ball

Complainants Exhibit
Pickels Testimony A.
Chas E Weber
U.S. Comr

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this nineteenth day of October, in the year of our Lord eighteen hundred and eighty-nine.

[SEAL.] A. P. SELBY,
Clerk of said Court,
By T. L. CRAWFORD, *Deputy.*

144 (Endorsed:) No. 3052. United States circuit court, eastern division of the eastern judicial district of Missouri. Michael Haughey against Mound City Coupe Co. Duly certified copy of final decree (of date October 17th, 1889) in the above-entitled cause. Complainant's Exhibit Former Decree.

(Endorsed:) No. 10. October sess., 1889. In equity. Michael Haughey *vs.* Jesse Lee *et al.* Complainant's exhibits. Filed Apr. 23, 1890.

145 COMPLAINANT'S EXHIBIT "DEFENDANTS' CIRCULAR."

Busch's Dangle-boots for Spreading a Horse's Gait.



Purpose.—A cure for the habit of interfering. Not simply a protection.

Action.—The balls strike the opposite leg and the horse must travel wider to avoid them.

Make-up.—The strongest materials are used. No slipping. Can't chafe.

References.—Every horseman who has ever used the Busch dangle-boot.

Price.—$2.00 per pair.

JESSE LEE & SONS,
Owners of Patent and Manufacturers,
No. 37 South Fourth Street, Philadelphia.

(Here follows pencil sketch marked page 146.)

147 *Complainant's Rebuttal Testimony.*

Depositions on behalf of complainant in rebuttal, taken before Wm. A. Shaw, notary public and special examiner, and by him stenographically, on Monday, March 31, 1890, at 11.30 a. m.

Present: E. J. O'Brien, Esq., and Edward P. Bliss, Esq., for complainant, E. H. Hunter, Esq., for respondents.

(Counsel for complainant offer in evidence the following deposi-

tions, heretofore taken and filed in this cause before Joshua Pusey, Esq., special examiner, appointed by the court, viz: Deposition of Michael Gallagher, deposition of Robert Jack, deposition of Lewis S. Wessels, deposition of Alfred Miller, deposition of Standish F. Hansel, deposition of M. S. Frink, deposition of R. L. Fitzgerald, deposition of James A. Marshall.)

It is stipulated and agreed by and between counsel for the complainant and respondents respectively that the said depositions may be read in evidence at the hearing of the cause, with the same force and effect as if the witnesses had been produced and examined in behalf of the complainant in rebuttal.

Depositions taken on behalf of complainant, pursuant to notice, before Joshua Pusey, special examiner, at his office, No. 905 Walnut street, Philadelphia, this twenty-fifth day of January, A. D. 1890, at eleven o'clock a. m.

Present: Edward J. O'Brien, Esq., and Edward P. Bliss, Esq., for complainant, E. H. Hunter, Esq., for defendants.

148 It is stipulated and agreed by counsel fos the complainant and the defendants respectively that the testimony of the witnesses shall be taken, stenographically, by Wm. A. Shaw, who shall be authorized to have the witnesses sign his notes, and that transcribed copies of said notes shall be filed and read with the same effect as the original depositions.

JAMES A. MARSHALL, affirmed.

By Mr. O'BRIEN:

Q. What is your age, residence and occupation?

A. 55 years of age; 924 Brown street, Philadelphia; veterinary surgeon.

Q. How long have you practiced your profession of a veterinary surgeon in Philadelphia?

A. I have been practicing regularly for twenty-one years.

Q. Does your profession bring you in contact with devices known as horse boots particularly in respect to that character of horse boot intended to ameliorate or cure the evil of in-ference in a horse?

A. Yes, sir.

Q. Do you recollect having seen a pendant or dangle-boot to prevent interfering in a horse in your experience in this city?

A. Yes, sir.

Q. What was the first device having a pendant that you have seen, or which has come to your knowledge in your experience of an interfering boot for horses?

A. The first one I seen was a strap round the ankle with rubber balls, as we call them—five rubber balls suspended on a flexible or loose strap attached to the strap round the ankle.

Q. Do you know where you first saw that device, and if it was known by any particular name?

149 A. I first seen it in my office. I saw an advertisement of it prior to that. I do not remember the length of time, with an illustration.

Q. Are you familiar with what is known to the trade as amongst horsemen as Haughey's interfering boot?

A. Yes, sir.

Q. Is that the boot to which you have reference?

A. That is the boot I allude to.

Q. How long ago is it since you first saw that device?

A. I cannot say positively, but my impression is in the neighborhood of two years; maybe three. I do not remember the length of time.

Q. Did you get possession of a boot at that time such as you had seen advertised?

A. Yes, sir.

Q. How did you do so?

A. I sent for them, I think, by letter, and they were returned by mail, if I ain't mistaken, or express, I forget which.

Q. Have you got that boot now, Doctor?

A. I ain't certain, but I have got a number of pairs. I have got some that I got from Mr. Morgan. It is a question with me whether I got the first pair which I ordered or not.

Q. Can you recollect from whom you bought the first pair, Doctor?

A. I cannot. I think it was Haughey according to the advertisement at St. Louis. I ain't positive. It was either there or Chicago. I have frequently ordered from Chicago, but I rather think that it was from the patentee. It might possibly have been some outside firm. It was from the West. I am satisfied of that. I think I seen the advertisement in The Horseman or The Spirit of the Times.

Q. Was the boot that you purchased two or three years ago similar to that which I now show you?

A. Yes, sir. (Witness identifies a model of the Haughey boot.)

Q. There are a numerous variety of horse boots for horses called horse boots, are there not?

150 A. Yes, sir.

Q. How many by a rough estimate?

A. I cannot estimate, sir. I have got no idea any more than I would have anything; they are so numerous.

Q. Are you familiar with a great many personally?

A. Yes, sir. I have been connected with trotting horses and such improvements as have been made to augment their speed or protect their limbs for I suppose thirty years.

Q. In all your experience, Doctor, have you seen an interfering boot like or substantially like this which I now show you, marked "Complainant's Model, Deamer Device, 12, 2, '90, Joshua Pusey, special examiner"? Please examine it before answering the question, and then state.

A. I never saw a similar boot to that prior to having been shown it by you within a week or ten days—a week, I suppose.

Q. The last week?

A. Yes, sir. I will answer this without a question. I never saw, prior to the Haughey boot, a boot that dangled or was suspended to the ankle for interfering or for traveling. I have seen chains suspended from the ankle to prevent the horse from kicking, or something like that, but that was for a different purpose entirely—rope and block of wood and so forth, but never for an interfering boot.

Q. You have no interest in this case whatsoever and are not a party to it?

A. No, sir.

Q. And you have been actively engaged in your profession for the last twenty-one years coming in daily contact with devices of this character?

A. Yes, sir.

Q. And you are thoroughly familiar with horses, and have been for thirty years?

A. Well, I should say so.

151 Cross-examined.

By Mr. HUNTER:

X Q. When did you commence to practice your profession of a veterinary surgeon?

A. Thirty-two years ago.

X Q. Where were you practicing at that time?

A. In Baltimore.

X Q. Did you continue in practice in Baltimore until you came to Philadelphia thirty-two years ago?

A. No, sir.

X Q. Will you just state where you were?

A. I was in Baltimore for about seven months, and then I went to Chambersburg, Pennsylvania, and was there for about two years. In 1860 I then went to Mechanicsburg to my home, and was engaged in the produce business, and also doing some little practice, not devoting my entire attention to it.

X Q. Then I understand that you did not commence your practice in Philadelphia until twenty-one years ago?

A. Yes, sir; I practiced in Philadelphia in 1864, but did not make a business of it. I was in the produce business in Philadelphia, but at the same time I was also practicing my profession. From 1861 to 1863 I was most of the time in the produce business.

X Q. Were you acquainted at any time with a blacksmith by the name of Chestnut having his place of business on Filbert street above Fifteenth?

A. No, sir.

X Q. Are you acquainted with Mr. Henry Deamer?

A. No, sir, not personally that I know of.

X Q. Have you ever been for any length of time in Montgomery county, especially in the vicinity of Norristown? By any length of time I mean have you resided there, or made a long stay there?

A. No, sir.

X Q. Will you briefly explain how the so-called Haughey interfering device has the effect of ameliorating or curing the so-called evil of interfering in horses?

152 (Counsel for complainant object to the question as not being cross-examination.)

A. In one leg passing another in that manner (indicating) in place of striking the leg the probability is that the projection is more likely to hit those rolls and pass off without bruising or skinning the leg. At the same time, in a motion of that kind the point of that striking the leg, it is more likely to make them get away from it, and the horse is apt to spread. That is why I prefer it to a pad. A pad would protect the leg, but it would not be liable to make him spread the leg, but this strikes the leg, and makes them go wider. That is where I think it is better in striking the leg in that manner (indicating) spreading the legs—not so liable to hit. One of the best boots I have ever used for interfering, and one of the first boots that I know of was a bundle of straw tied around with three or four inches passing the leg. That would naturally make the horse go a little wider, and would not interfere. The action is similar to this.

X Q. You have seen those straw boots in use, I understand?

A. Yes, sir.

X Q. Have you ever observed the operation practically upon a horse of one of those so-called Haughey boots?

A. Yes, sir, I have used them frequently.

X Q. Does the pendant portion invariably strike the opposite leg of the horse to that by which the boot is carried, or does it sometimes strike the other leg also?

A. It strikes the other leg. The horse boot is only to strike the leg to which it is attached, but it would be very liable to strike the other leg before it would strike the skin. It would pass the other leg, although the horse would get away from it.

X Q. I understand it would strike the leg that it was carried on also?

A. It would dangle on that also if it was flexible, but it would be liable to strike the other leg with more force than the leg which it was on.

153 X Q. Have you ever heard of a horse boot having a pendant portion suspended from a leg strap prior to the time your attention was first called to the so called Haughey boot?

A. No, sir; not for interfering purposes. As I mentioned before, I have seen a pendant attached to a leg strap to prevent a horse from kicking in the stall with a rope and a block of wood and a chain from ten to fourteen or fifteen inches long, so that when the horse would make a kick, the chain would rebound and strike the leg. I have used those a good many years ago. Every time a horse is pawing, it punishes him.

X Q. Upon what part of the horse's leg were those devices suspended?

A. Generally above the knee of the front leg and the hock of the hind leg.

X Q. If such a device was suspended or was attached at or near the pastern joint and the chain was reasonably shortened, would not such a device act in substantially the same manner as the so-called Haughey boot?

A. The difference would be that a device suspended to prevent kicking would be so much heavier than this that it would bruise the horse's leg. It would be either the chain which I mentioned before of iron which is heavy, or of a rope with a block of wood attached to it, which is heavy. I think if a chain of that length were to be suspended, a very light chain, it might possibly have the effect, but there would not be the elasticity about it and it might bruise the leg.

MICHAEL GALLAGHER, sworn.

By Mr. O'BRIEN:

Q. Please state your age, residence and occupation.

A. My age is 53; residence, 1707 North Fifteenth street; harness-maker. My business place is 15 North Ninth street.

154 Q. You are both a dealer and manufacturer in harness and horse goods?

A. Yes, sir.

Q. How long have you been engaged in that business in this city?

A. I went first to learn my trade in 1853.

Q. In Philadelphia?

A. Yes, sir.

Q. And you have been at it constantly in this city from that time to the present?

A. Yes, sir.

Q. Are you familiar with what is known in your business as horse boots for the use on interfering horses?

A. Yes, sir.

Q. Have you had your attention frequently called during your experience in the last twenty-five or thirty years to devices of that character?

A. Yes, sir. Most everything new that comes out I get a circular of, or see it in the papers.

Q. Have you come in daily contact with horses and owners of horses in the last twenty-five or thirty years in this city in connection with the necessity for the use of horse boots?

A. Well, between twenty-two and twenty-three years before that I worked at journey work.

Q. Then for the last twenty-two or twenty-three years you have come in daily contact with devices of that character and in supplying the wants of horsemen for their horses concerning such things?

A. Yes, sir.

Q. I will ask you, then, if you know what is known in the trade as the Haughey interfering boot?

A. Yes, sir; I do.

Q. You have sold some of them?

A. Sold some of them and have them now for sale.

Q. How long have you known that boot on the market?

155 A. In the neighborhood of about three years, perhaps, if my recollection serves me right; maybe more or less, but about that time.

Q. Was it a new thing at that time?

A. It was to me.

Q. Had you, in your experience previous to that time, seen a pendant-dangled interfering boot?

A. Nothing more than Dr. Marshall explained; a chain for kicking purposes, not for interfering.

Q. I will call your attention now to a device which I hand you, marked "Complainant's Model, Deamer Device," and ask you if you have seen a device like or similar to that model in your experience, and if so, when?

A. The first time I ever saw it was yesterday when you called my attention to it.

Q. If such a thing was in public use in Philadelphia in the last thirty years, would you be apt, in your wide experience, to have seen it?

A. Well, I would think so, if it had been in general use.

Q. The first time, however, that you have ever seen a device of that construction was the one that I showed you yesterday?

A. Yes, sir.

Cross-examined.

By Mr. HUNTER:

X Q. When did you first begin in your business as a harness-maker to purchase interfering devices or horse boots and offer them for sale?

A. Well, I made boots before, but I purchased from the man I was with about 1867 or 1868. I was on Twelfth street then, above Filbert, with a man by the name of Hunt, and then we removed to Ninth street, and it was Hunt & Gallagher then, and since then I followed the business.

X Q. Have you ever made horse boots to order?

A. Yes, sir.

X Q. Have you done that to any extent?

156 A. Yes, sir.

X Q. Was it not the general custom several years ago for horse boots to be made to order?

A. Yes, sir.

X Q. Are you acquainted with Henry Deamer, Jr.?

A. Yes, sir.

X Q. How long have you known him?

A. I have known Henry Deamer for years.

X Q. Were you acquainted with a blacksmith by the name of Chestnut?

A. No, sir; I knew where his place was.

X Q. That was on Filbert street, above Fifteenth?

A. Yes, sir.

X Q. Were you acquainted with one Alonzo Wiley, of Philadelphia?

A. No, sir; not to my knowledge.

X Q. Do you claim to be familiar with all kinds of horse boots that have ever been used?

A. Well, that have ever been used within the last 22 or 23 years, and the best boots have been gotten up within that time—the best devices.

X Q. You mean by that, those devices that were publicly on sale?

A. Yes, sir.

X Q. Of course, other devices that may have been in use by different individuals, made upon their own order or by themselves and not generally advertised and offered for sale, you do not claim to be familiar with, do you?

A. Of course, that I don't know anything about, because I have never seen them.

By Mr. O'Brien:

X Q. How long has Mr. Chestnut, the blacksmith, been out of business, if you know?

A. That I don't know. I recollect the man's face being familiar to me about 12 or 15 years ago. Maybe 20 years ago.

157 By Mr. Hunter:

X Q. You do not mean 20 years; he has been out of business; it is 20 years since you saw him?

A. I did not know; the man has been dead some time.

Robert Jack sworn:

Q. State your age, residence and occupation.

A. 43 years of age; 1437 Tasker street, Philadelphia; carriage repository.

Q. What experience have you had with devices for the use on interfering horses?

A. Well, I have seen quite a number of boots of all descriptions, but I am not familiar with the names of them.

Q. Will you please tell us what experience you have had with horses in the city of Philadelphia, and what has been the nature of that experience?

A. 25 years.

Q. What has been the nature of your experience; what have you been doing in and about them?

A. Buying and selling them; driving and training them, and anything to make a dollar out of them. I do not make a legitimate business out of it, you know, but buy and sell them and turn them round.

Q. For 25 years in this city?

A. Yes, sir.

Q. During that experience of the past 25 years in this city could you give us a probable estimate of how many horses you have handled and sold?

A. No, sir, I could not.

Q. Was it large or small?

A. I could not make an estimate.

Q. Has it been a great many or otherwise?

A. Been some few. I cannot make an estimate in 25 years of how many horses I handled and sold.

158 Q. How long has your experience as a driver of horses and breaker-in of horses covered?

A. I have been driving them for 25 years, but not breaking them in.

Q. Have you had experience in breaking them also?

A. Breaking them to suit me, that is all; not to take a colt and go and break it; I have never had that experience.

Q. Have you had much experience with horses that interfere?

A. Yes, sir; I have got one now.

Q. Are you familiar with devices that were used to help an interfering horse?

A. Well, I am not familiar with the name of the boots that they put on them.

Q. Do you know the Haughey boot having a pendant or dangle round the leg strap?

A. I only know it by the term here.

Q. How long have you known, if you know, a pendant like the Haughey device, a pendant round the leg strap?

A. I cannot tell when I first seen that boot. I think the first place I seen it was in the Chicago Horseman advertised, to the best of my knowledge.

Q. Within the last three years?

A. Within that time, yes.

Q. Was that the first time you saw a boot with a pendant working like the Haughey interfering boot in your experience?

A. That is the first time that I ever *I* seen it. I think the next time I seen it was at Dr. Marshall's; he had it on one of his horses, but I remember seeing it in the Chicago Horseman.

Q. I will ask you to examine this exhibit which I now hand you, marked "Complainant's Model, Deamer Device," and ask you to please state if you have seen in use a similar device to that exhibit in this city of Philadelphia or elsewhere prior to the last two years.

A. I never seen a boot of that construction in my life until I seen it yesterday or the day before.

159 Q. Your whole business has been connected with horses during the past 25 years, and is now?

A. Horses, carriages and harness.

Q. And you have during that time been brought in daily contact with them and with owners and drivers of horses?

A. Yes, sir.

Q. In the city of Philadelphia?

A. In the city of Philadelphia.

Q. And in all your recollection you cannot recall seeing a boot similar to that exhibit in your hands used?

A. No, sir.

Cross-examined.

By Mr. HUNTER:

X Q. Will you state approximately about how many different kinds of horses' boot you have seen in use?

A. Well, I have seen them covered from their ears to their tails, but how many was on them I could not answer. Some horses require more to protect them for speed than others and that is the reason they go so fast by their protection.

X Q. What I meant by the question was how many different kinds of boots have you seen in use?

A. Quite a number; I could not describe them. Sometimes when you go to see a race, you begin to count them. Sometimes you count 10 or 15 boots on them.

X Q. Were you acquainted with a blacksmith by the name of Chestnut?

A. No, sir.

X Q. Were you acquainted with one Alonzo Wiley, of Philadelphia?

A. I do not remember him. I might be acquainted with him if I saw him, but I cannot recall him by name.

By Mr. O'BRIEN:

X Q. You have no interest in this case or the parties to it?

A. Not a particle.

160 LEWIS S. WESSELS, sworn.

By Mr. O'BRIEN:

Q. Please state your age, residence and occupation.

A. 55; 2108 Columbia avenue, Philadelphia; harness business.

Q. In what house are you or have you been connected in this city?

A. The house of E. P. Moyer & Bros. I was their general superintendent for about 30 years up to the breaking up of the firm by death.

Q. And you are with the house that goes under that name now?

A. Yes, sir.

Q. Has your connection in that business with the house been covering all the time within the last 30 years in this city?

A. Yes, even longer than 30 years. I have been in business since their death.

Q. So that your whole experience in the business would cover how many years?

A. Between 35 and 40.

Q. In this city?

A. Yes, sir.

Q. Your business necessarily throws you into communication with owners and users of horses daily, does it not?

A. Yes, sir. The earlier part of my business was principally wholesale.

Q. You are familiar also with the retail trade?

A. Yes, sir.

Q. Are you familiar with devices known in the business in which you are engaged as horse boots?

A. Yes, sir.

Q. Are such devices numerous and of various forms and for various purposes, or otherwise?

A. Very numerous.

Q. You are familiar with a great variety of boots known as horse boots?

161 A. Great variety.

Q. How long has that been that you have been familiar with horse boots?

A. Thirty or thirty-five years. The earlier part of my business career horse boots were comparatively few. They appear to increase every year.

Q. Are you familiar with boots for the special purpose of use on interfering horses?

A. I am.

Q. There is a great variety of those also in your experience?

A. Yes, sir.

Q. Are you acquainted with the device known as the Haughey interfering device carrying a pendant on the leg strap?

A. Yes, sir.

Q. How long have you known that?

A. About two years.

Q. Was that device old or new to you?

A. New.

Q. In what particular, if any, that you can recall, was it new?

A. I had never seen a dangle for the purpose of interfering.

Q. I will ask you to examine this exhibit, marked "Complainant's Model, Deamer Device," and tell us whether or not you have seen that device before or a similar device to that confining yourself to the model; if so, when?

A. The first time I ever saw anything similar to that was yesterday.

Q. Had you ever seen a similar device to that prior to yesterday?

A. I had not.

Q. If such had been in public use in the city of Philadelphia, would you in all probability have known or have come across it in your experience?

A. I would.

162 Cross-examined.

By Mr. HUNTER:

X Q. I understand that you have seen a very large number of horse boots of different kinds and characters?

A. Yes, sir.

X Q. You do not remember and you could not describe all of those different kinds of horse boots now?

A. I certainly could not describe them. I think I could remember them all, but I certainly could not describe them.

X Q. About how many varieties would you suppose that you had seen?

A. Well, I would not like to answer that question, for I do not believe I could tell how many I had seen.

X Q. I do not mean the numbers, but I mean generally; it was a very large number, was it not?

A. It would certainly, I think, run into the hundreds.

X Q. Your knowledge of the different kinds of horse boots is derived, as I understand it, from those which you met with in connection with your business as a harness-dealer?

A. Yes, sir.

X Q. Of course, you do not claim to know anything about other devices that may have been made and used but were not generally sold by harness-makers?

A. I only know those that were sold by dealers.

X Q. Are you acquainted with a blacksmith by the name of Chestnut, or one Alonzo Wiley, of Philadelphia, or either of them?

A. No, sir; I do not know either of them.

X Q. Are you acquainted with a blacksmith by the name of John H. D. Miller, having his place of business on Ridge avenue?

A. No, sir; I do not know him.

By Mr. BLISS:

X Q. You have no interest in this case, or with any of the parties to it?

A. Not any.

163 ALFRED MILLER, affirmed.

By Mr. BLISS:

Q. Will you please state your age, residence and occupation?

A. I was 66 last May; 123 Brown street and have been in the saddlery and hardware and carriage-trimmings business.

Q. For how many years?

A. I went into the business in 1836, and I got out of the business a week before last Christmas, as the party I was with closed out.

Q. With what houses have you been connected during that time?

A. The first party I went with when I was a boy was William Ford, and in the course of a few years he sold the concern out to a firm known as Alexander, Goff & Peterson, and after the course of a few years Mr. Alexander went out, and the firm then was Goff &

Peterson, and then the firm changed again to Jacob W. Goff, and he died in 1865, and then the firm went under the name of M. Goff & Co., and I was with them about three years, and after that I changed my firm and went with Ayres, Lippincott & Company, and after that the firm changed to Lippincott, Cole & Riley, and I was with them until they relinquished their business, to change their business; and then I went in what was known as Stoddard, Jones & Yerges, and then the firm changed in a few years to Yerges, Jones & Co., and I was with them then. I was with them about 14 years, and then I got out of there, and then got a situation in George De B. Keim & Co.'s, and then I got out of that situation and was idle several months. In the meantime, I was doing some outside business not in my regular business. I was agent, selling books. Then the last place I was with was Conard B. Day & Co. He relinquished the concern one week previous to Christmas of last year.

Q. You have then been connected with the harness business for over 50 years?

A. I have.

164. Q. In Philadelphia?

A. In this city.

Q. During that time did you become familiar with the various kinds of horse boots which were made and sold in Philadelphia?

A. I did.

Q. Did you become acquainted particularly with the various kinds of interfering boots?

A. Yes, sir. When the business commenced, there were certain styles, and and as the improvements came along, they changed to various kinds. I suppose I could not enumerate the number of them.

Q. There have been a great many boots devised for preventing interference?

A. There have, yes, sir.

Q. Have you seen what is known as the Haughey interfering boot, a model of which I show you?

A. I have, and I have bought them for Conrad B. Day to fill orders. Either Keim or Day, I don't know which.

Q. Can you remember about how long ago you first saw these boots?

A. I think it has been about two years. It was some time before I had the handling of them. I had heard of them. Persons had asked me if I had ever heard of an interfering boot with a dangle on it.

Q. Prior to that time, did you ever hear or see any interfering boot with a pendant or dangle?

A. Not to the best of my knowledge.

Q. Please look at the model I now show you marked "Complainant's Model Deamer Device," and state whether you ever saw or heard of such a device or one similar to it prior to the introduction of the Haughey device?

A. Not to the best of my belief and knowledge until yesterday.

Q. You have no interest in this suit?
A. No.
Q. You are not now in the harness business at all?
A. I am out of the harness business now.

165 Cross-examined.

By Mr. Hunter:

X Q. Your knowledge of the different kinds of horse boots, as I understand it, is derived from those boots that were dealt in by the different firms with whom you have been connected. You do not claim to have a knowledge of other devices that may have been from time to time employed by individuals and not generally dealt in by the firms with whom you are connected?
A. No; because sometimes the parties would have boots made for themselves that would not get into the trade. They would have an idea that such and such a boot might do better.
X Q. And horse boots were made to order?
A. And kept in stock also.
X Q. I mean it was customary for harness dealers and makers to have special construction of horse boots and according to the particular ideas of a purchaser, was it not?
A. Yes, and harness-makers would have little idea about certain boots, and get them made and try them.
X Q. Were you acquainted with a blacksmith by the name of Chestnut, or one Alonzo Wiley, or either of them?
A. No, sir.

Meeting before Joshua Pusey, special examiner, at his office, 905 Walnut street, on Monday, January 27, 1890, at 10.30 a. m.

Present: Edward J. O'Brien, Esq., and Edward P. Bliss, Esq., for complainant. E. H. Hunter, Esq., for defendants.

Standish F. Hansell affirmed.

By Mr. Bliss:

Q. State your age, residence and occupation.
A. 69; 1705 Summer street; saddlery and harness.
166 Q. What is the firm name and place of business?
A. W. S. Hansell & Sons, 114 Market.
Q. How long have you been engaged in the saddlery and harness business in Philadelphia?
A. Over 40 years.
Q. Actively engaged all that time?
A. Yes, sir; a member of the firm for over 40 years.
Q. How long has the firm been engaged in business here?
A. My father started in 1810.
Q. Are you familiar with the line of goods in your business known as horse boots?
A. Yes, sir.

Q. I will show you this boot, made after the patent of Mr. Haughey, and ask you if you have seen that on the market here.

A. We have dealt in those.

Q. What did you think of it when you first saw it, as respectsi ts novelty?

A. I thought it was a novelty, and I was afraid it would be too severe for a horse a few years ago.

Q. Was it the first time you ever saw a pendant on a horse boot in use on the market?

A. I cannot say as to that. I thought it was an entirely original idea when I first saw it.

Q. I will ask you to look at this device which I now hand you, marked "Complainant's Model, Deamer Device," and ask you if you have seen that in public use in this city at any time.

A. I have not seen it in public use at any time, although it may have been.

Q. Do you recall ever having seen one of that model (Deamer device) before I showed one to you made exactly like it?

A. I do not. I have seen something like it within a year or two, but not as he claimed years ago.

Q. You have no interest in this matter?

A. No, sir.

167 Cross-examined.

By Mr. HUNTER:

X Q. Do you claim to be familiar with all kinds of horse boots?

A. I do not believe I do. There are so many kinds gotten up recently.

M. S. FRINK sworn.

By Mr. BLISS:

Q. Will you please state your age, residence and occupation?

A. I am a single man, 54; my place of business is 247 North Third street; my residence is 445 North Fourth street, and my occupation is that of saddlery and leather goods.

Q. You are a manufacturer and wholesale dealer in harness goods, are you not?

A. Yes, sir.

Q. How long have you been in the harness business?

A. About 36 years.

Q. Are you familiar with the various kinds of boots and devices which have been used during that time for preventing interfering in horses?

A. Well, we have handled almost everything in the boot line. Of course, there may be some boot that I have never seen, but we have handled almost everything in the line.

Q. Please look at the model which I hand you, marked "Exhibit Deamer Device," and state whether in your experience you ever saw or heard of such an interfering device prior to the time when I showed it to you a few days ago.

A. I never saw but this one, and I think this is the same one in which I noticed peculiarities; I think this is the same one you showed me.

Q. And you never saw one before I showed it to you a few days ago?

A. I never saw one like that, that is sure.

168 Cross-examined.

By Mr. HUNTER:

X Q. Your knowledge of these different horse boots is derived from your acquaintance with those devices that are commonly dealt in in your business, is it not?

A. We manufacture horse boots. We make in the horse-boot line a regular line, and then we make varieties of lines, you know, for special orders, so that they are not what you would call regular goods. Still we make a regular line of goods, and then we have specialties which we have to make to order.

X Q. Then your knowledge is dependent upon those regular lines of goods, and such special orders as may be placed with you from time to time, is it not?

A. I do not know that you could say that was my knowledge, and still you could answer that question yes or no. My knowledge of the business is not only derived from what we make ourselves, but whatever we see other people make. For instance, there are boots made in California. Well, if we want to get a certain boot we go out and get a boot, and we use that as a sample, but we do not copy them.

X Q. I mean those general lines of goods that are sold by different firms throughout the country, not by your firm alone. I mean those devices which are generally on sale.

A. It would be pretty hard for a man to answer your question, for this reason: a mechanic is called upon at all times to go to different places. For instance, a horseman wants a shoe made of a certain weight, and after seeing that he would, as I do, fall onto this regular dangled boot, which I had never seen before, and I suppose that must have been two or three years ago. I think it was then at the track at Belmont, two or three years ago, and I just happened to run along that boot. As I told Mr. Bliss, we have only handled a dangled boot one season. We get our knowledge from the general public. We get as much knowledge from a horseman or from a man driving upon the track as we get from our competitors. In fact, that is where we derive all our knowledge. I think we
169 derive most of our knowledge which we derive in the boot business—at least I have—from horsemen. Of course, we steal all the patterns and steal all the trade we can from our competitors; that is understood.

X Q. By the dangled boot do you mean such a boot as is exhibited in the device which was shown to you known as the Deamer device?

A. I do not know that I ever saw this before until Friday or

Saturday. I do not think I ever saw this boot before. That boot there, if that is the regular boot, we handled last season (indicating the Haughey boot). We bought those boots of Morgan. We do not make them at all.

X Q. Did you ever see a boot other than these two which have been exhibited to you here to-day, in which there was a depending portion of any character or description whatsoever supported by a leg strap?

A. I do not know that I would be expert enough to answer that question. I do not want to assert anything that I cannot back up pretty well.

X Q. Then you are not prepared to say positively that you have not seen such a device?

A. If you mean a boot made as a dangled boot, I do not think I have ever seen anything but that (indicating the Haughey boot). Now, the idea that I have of this boot may be different from what you have. Of course, my explanation may not suit you exactly. Now, the idea of this boot is that it works this way. As the horse steps, he raises that up, and that strikes his other ankle and makes him throw his other leg off. Now, there is a boot made which is perfectly stiff, which goes right out. Now, if you ask me for a boot made different from that, there is a boot made of bristles. Now, the only boot that I ever saw of this sort is this boot (Haughey). We always call it the dangled boot. We buy this boot. We make nothing of the kind at all; in fact, I do not know that any other kind was ever offered.

By Mr. BLISS:

X Q. Now, I understand you to say that in all of your ex-
170 perience in the trade and among horsemen you have never seen any other boot with a dangle except the Haughey boot?

A. No, sir.

X Q. You have no interest in the Haughey patent, or in this litigation, have you?

A. I did not know there was any litigation until Friday. I have no interest in it whatever. I have no interest in this boot or patent on any boot.

ROBERT L. FITZGERALD, a witness produced on behalf of complainant, being duly sworn, in answer to interrogatories by Mr. O'BRIEN, of counsel for complainant, deposes and says:

Q. 1. What is your name, age, residence and occupation?

A. Robert L. Fitzgerald; age, 35; residence, 313 Spruce street, Philadelphia. I am turf editor of the Philadelphia Item.

Q. 2. Are you familiar with devices known as horse boots in your experience?

A. Yes, sir; I have used them on my own horses.

Q. 3. How long have you been familiar with such devices in and about horses as are used on those that interfere, in this city and elsewhere?

A. I have known of this boot, called the Haughey boot, for about four or five years.

Q. 4. The first one you ever saw was just like this one with the patent plate on it marked Patent, March 20, 1888?

(Objected to as grossly leading.)

A. That is the boot. I may be mistaken as to the number of years I have seen it, but it seemed that long to me. It has done such good service that it seemed that long to me. I have a very valuable mare that it made her spread out, and saved her from ruining her legs.

171 Q. 5. Previous to your becoming acquainted with the Haughey boot, which I believe you got from Mr. Morgan, the licensee, had you ever seen a dangle-boot like or similar to it?

A. I never did.

Q. 6. I will call your attention to the exhibit marked "Complainant's Model, Beamer Device," and ask you if you had previously seen at any time a dangle-boot like that is?

A. I never did.

Q. 7. And your experience with horse boots covers in Philadelphia how long?

A. Eighteen years.

Q. 8. During that time has your experience, being amongst horsemen interested in such contrivances?

A. It has.

Q. 9. In what way?

A. Socially, and in a business point of view.

Q. 10. Frequent or otherwise?

A. Daily.

Q. 11. Have you any interest in this case?

A. None. I don't know any of the parties connected with it. I was merely asked to come and give my evidence as to this boot.

Cross-examined.

By Mr. HUNTER:

X Q. 12. Do you know of a boot called the Busch dangle-boot?

A. No, sir.

X Q. 13. You have never seen it?

A. Not that I know of. I don't know the name. If you will show me one of them I will tell you. I know all the boots, but not all their names.

(A Busch boot is shown the witness.)

I never saw it.

R. L. FIZGERALD.

172 Depositions on behalf of complainant in rebuttal, taken before William A. Shaw, notary public and special examiner, on Monday, March 31, 1890, at 11.30 a. m.

Present: E. J. O'Brien, Esq., and Edward P. Bliss, Esq., for complainant; E. H. Hunter, Esq., for respondents.

WILLIAM E. WEEKS sworn.

By Mr. BLISS:

Q. Please state your name, age, residence and occupation.

A. William E. Weeks; 30; 1939 Mountain street; manager for Charles H. Kendrick's livery stable.

Q. Where is Mr. Kendrick's livery stable?

A. 1126 Race street.

Q. Have you charge of the horses in Mr. Kendrick's stable and the ordering of harness and supplies?

A. Yes, sir.

Q. Are you acquainted with interfering boots known as Busch's dangled boots manufactured and sold by Jesse Lee & Sons?

A. Yes, sir.

Q. Have you used such boots in your stable?

A. Yes, sir.

Q. Please state when you first began to use those boots.

A. About a year ago.

Q. From whom were the boots purchased?

A. Lee & Sons; that is, through their salesman; their salesman brought them there.

Q. Have you any of those boots now in your possession?

A. Yes, sir.

(Witness produces two samples of interfering boots and identifies them as two of the boots furnished by Jesse Lee & Sons and used in the stable of Mr. Kendrick. They are offered in evidence
173 and marked "Complainant's Exhibit Kendrick Boot A," and "Complainant's Exhibit Kendrick Boot B.")

Q. How long were these boots in use?

A. Since about the first of the year; some time during January.

Q. Did you see them when they were first purchased, when they were new?

A. Yes, sir.

Q. Do you remember their appearance at that time?

A. Yes, sir.

Q. Was it substantially the same as the boot which I now hand you, marked "Complainant's Exhibit Defendants' Device"?

A. About the same; yes, sir.

Q. And the pendant or striker hung down in about the same way that the striker on this boot I show you does?

A. Yes, sir.

Q. Have you ever used in Mr. Kendrick's stable or elsewhere the patented device known as the Haughey boot?

A. Yes, sir.

Q. Are you able to say whether there is any practical difference between the operation of the Haughey boot and that of the Busch dangled boot?

(Objected to as incompetent.)

A. There is no difference on the action of a horse while the horse is in motion.

Q. In other words, you consider the two boots as operating in practically the same way, do you?

A. Yes, sir.

Q. How many boots were furnished by Jesse Lee & Sons to Mr. Kendrick?

(Objected to as immaterial.)

A. About two dozen, as far as I know.

Q. And they were all substantially such as you have described and like the ones to which your attention has been called?

A. Yes, sir.

174 Q. Have you ever seen in use such a device as I now hand you?

A. No, sir.

Q. Have you ever heard of such a device being used as an interference boot upon horses?

A. No, sir.

(The device handed witness is offered in evidence and is marked "Complainant's Exhibit Copy of Deamer Device.")

Q. I notice that the boots which you have produced and identified as Busch boots furnished by Lee & Sons contain a strip of rawhide. Will you please state what effect is produced upon this rawhide by its becoming wet.

A. Softens.

Q. And, in point of fact, whenever a boot is put upon a horse's leg it very soon becomes more or less wet, does it not?

A. It depends altogether upon the weather. If it is a dry day, it does not get wet unless it should get in the gutter, or something like that.

Q. Well, it is a very common thing for a horse to get into the gutter, is it not?

(Objected to, as leading and immaterial.)

A. Yes.

Q. And even when a horse does not get into a gutter the bedding in his stable is more or less moist, is it not?

A. Yes; but a boot is not supposed to be kept on a horse in a stable.

Cross-examined.

By Mr. HUNTER:

X Q. I understand you to say that the rawhide softens when it becomes wet?

A. Yes, sir.

X Q. Will you please explain what, if you know, is the effect upon the rawhide when it dries again after it has become wet.

175 A. Hardens.

X Q. Is it not when it dries a second time or dries again harder and stiffer than it was before it was first wet?

A. That depends altogether upon how a boot is taken care of. If a boot is oiled, as we do, every day, when a boot comes in, we first oil our boots, and never let them get hard.

X Q. What is the object of oiling them?

A. To keep the rawhide from breaking, the same as you take care of a thing, and the more you take care of it, the longer it will last.

X Q. Then without it is oiled, the natural tendency of dampening or wetting the rawhide and allowing it to dry would be to make it harder and stiffer?

A. And the mud that accumulates on it, yes, sir.

X Q. Of those two boots which you have produced I notice that the pad and strap of one is very much darker than the other. Is it not a fact that this has been subjected to greater use?

A. Yes, sir.

X Q. What is the object of this striker?

A. To spread the horse to keep him from interfering.

X Q. How does it accomplish this object?

(Objected to, as not proper cross-examination.)

(Counsel for respondents calls attention to the fact that counsel for complainant asked this witness whether the operation of this device and the Haughey device were the same, and this question, counsel for respondents maintains, is sufficient warrant for this line of questioning.)

A. By the motion of it. The object of it is this way (indicating). This, naturally, goes against the horse's leg that the boot is on, the interfering leg, the one that he strikes makes a horse spread when he is in slow motion. When he is fast, this is the motion of it (indicating); travelling fast, strikes the other leg, if he travels close.

X Q. Have you watched these devices while they are in operation?

176 A. Yes, sir.

X Q. Is not the object of this striker to strike the opposite leg of the horse when he brings his legs too close together?

A. No, sir—beg your pardon; I won't say whether it is intended to strike the other leg or not, but it naturally strikes both.

X Q. Have you seen it strike the leg to which it is attached?

A. Yes, sir.

X Q. Have you used the Haughey boot?

A. Yes, sir.

X Q. What is the object of the striking portion in the Haughey boot?

A. I cannot see any difference between the two.

Q. Are you able to say whether there is any practical difference between the operation of the Haughey boot and that of the Busch dangled boot?

(Objected to as incompetent.)

A. There is no difference on the action of a horse while the horse is in motion.

Q. In other words, you consider the two boots as operating in practically the same way, do you?

A. Yes, sir.

Q. How many boots were furnished by Jesse Lee & Sons to Mr. Kendrick?

(Objected to as immaterial.)

A. About two dozen, as far as I know.

Q. And they were all substantially such as you have described and like the ones to which your attention has been called?

A. Yes, sir.

174 Q. Have you ever seen in use such a device as I now hand you?

A. No, sir.

Q. Have you ever heard of such a device being used as an interference boot upon horses?

A. No, sir.

(The device handed witness is offered in evidence and is marked "Complainant's Exhibit Copy of Deamer Device.")

Q. I notice that the boots which you have produced and identified as Busch boots furnished by Lee & Sons contain a strip of rawhide. Will you please state what effect is produced upon this rawhide by its becoming wet.

A. Softens.

Q. And, in point of fact, whenever a boot is put upon a horse's leg it very soon becomes more or less wet, does it not?

A. It depends altogether upon the weather. If it is a dry day, it does not get wet unless it should get in the gutter, or something like that.

Q. Well, it is a very common thing for a horse to get into the gutter, is it not?

(Objected to, as leading and immaterial.)

A. Yes.

Q. And even when a horse does not get into a gutter the bedding in his stable is more or less moist, is it not?

A. Yes; but a boot is not supposed to be kept on a horse in a stable.

Cross-examined.

By Mr. HUNTER:

X Q. I understand you to say that the rawhide softens when it becomes wet?

A. Yes, sir.

X Q. Will you please explain what, if you know, is the effect upon the rawhide when it dries again after it has become wet.

175 A. Hardens.

X Q. Is it not when it dries a second time or dries again harder and stiffer than it was before it was first wet?

A. That depends altogether upon how a boot is taken care of. If a boot is oiled, as we do, every day, when a boot comes in, we first oil our boots, and never let them get hard.

X Q. What is the object of oiling them?

A. To keep the rawhide from breaking, the same as you take care of a thing, and the more you take care of it, the longer it will last.

X Q. Then without it is oiled, the natural tendency of dampening or wetting the rawhide and allowing it to dry would be to make it harder and stiffer?

A. And the mud that accumulates on it, yes, sir.

X Q. Of those two boots which you have produced I notice that the pad and strap of one is very much darker than the other. Is it not a fact that this has been subjected to greater use?

A. Yes, sir.

X Q. What is the object of this striker?

A. To spread the horse to keep him from interfering.

X Q. How does it accomplish this object?

(Objected to, as not proper cross-examination.)

(Counsel for respondents calls attention to the fact that counsel for complainant asked this witness whether the operation of this device and the Haughey device were the same, and this question, counsel for respondents maintains, is sufficient warrant for this line of questioning.)

A. By the motion of it. The object of it is this way (indicating). This, naturally, goes against the horse's leg that the boot is on, the interfering leg, the one that he strikes makes a horse spread when he is in slow motion. When he is fast, this is the motion of it (indicating); travelling fast, strikes the other leg, if he travels close.

X Q. Have you watched these devices while they are in operation?

176 A. Yes, sir.

X Q. Is not the object of this striker to strike the opposite leg of the horse when he brings his legs too close together?

A. No, sir—beg your pardon; I won't say whether it is intended to strike the other leg or not, but it naturally strikes both.

X Q. Have you seen it strike the leg to which it is attached?

A. Yes, sir.

X Q. Have you used the Haughey boot?

A. Yes, sir.

X Q. What is the object of the striking portion in the Haughey boot?

A. I cannot see any difference between the two.

X Q. Is it the object of the striker in the Haughey boot to strike the opposite leg?

A. It strikes both, according to the motion of the horse.

X Q. Does it only strike the opposite leg when the horse is traveling fast?

A. Yes, sir.

X Q. Have you watched it in motion when the horse is traveling fast?

A. I have used both and seen both effects.

X Q. Have you watched it in motion when a horse is traveling fast?

A. Of course I have, or I couldn't say so.

X Q. Where did you watch the Haughey boot in use when the horse was traveling rapidly?

A. In the street and different places, wherever I would be driving; I cannot say any particular point.

X Q. How do you know that it struck both legs?

A. That was my object in testing the boot. The first pair that I ever bought was to see what the action of the boot was. That was the first pair of boots that ever I bought for a sorrel pacing
177 horse that I had. It interfered very bad, and a salesman came there and told me it would act, and I watched it to see whether it would act, and I put it on.

X Q. And from that observation you saw——

A. That it was a regular spreading boot.

X Q. That the pendant portion struck both legs of the horse?

A. According to the gait it traveled. When the horse is spreading, this boot will strike the opposite leg, or when driving fast.

X Q. Will it not also, to a certain extent, strike the leg to which it is attached when the horse is traveling fast?

A. I do not think it will when you are walking a horse at a slow gait.

X Q. No, no. My question is, when a horse is traveling fast, will not this striking portion also, to a certain extent, strike the leg to which the device is attached, as well as the opposite leg?

A. I would not say positively.

X Q. You would not?

A. I would not; no, sir. It would be pretty hard to get down and examine a horse when he is travelling fast. The only way you can tell is where he spreads his legs.

X Q. Referring to this device marked "Kendrick Boot A" and "Kendrick Boot B," are you able to say that the strikers would strike the horse's leg to which the device was attached when the horse was traveling fast?

A. Yes, sir; slow.

X Q. Then you mean that it would only strike the leg when the horse was traveling slow.

A. Yes, sir.

X Q. You have seen it strike the leg to which the device was attached?

A. In moving round the stable with a boot on.

X Q. When the horse was on the road?

A. Not when he was on the road. I could not see him when I was behind him. It was when I have seen him pacing up and down the street when we were trying a horse to see if the
178 required a spreading boot, and then we could see if he hit the other leg or not. A man sitting behind a horse it is impossible to see whether the boot is hitting the other leg.

X Q. Then have you ever seen the striking portion of these devices marked "Kendrick Boot A," and "Kendrick Boot B," strike the leg of the horse to which the device is attached?

A. I do not say that pair of boots, but of the same kind, not the same make.

X Q. But this was only when the horse was walking round the stable?

A. That I ever noticed it particular.

X Q. You never saw it at any other time?

A. Of course, then it lays on his hock.

X Q. You never saw it at any other time?

A. Never noticed it particularly.

X Q. In these devices which you have produced I notice that the striking portion projects outwardly?

A. Yes, sir; a horse's hock projects outwardly, too.

X Q. Do you mean to say that the horse's hock projects outwardly sufficient for these strikers to rest upon it?

A. Yes, sir; at the ankle; to lay against it.

X Q. What portion of the striker lays against it?

A. The balls.

X Q. Which portion of the balls?

A. The underneath portion.

X Q. Of the balls on the end?

A. No; here (indicating near the pad).

X Q. Then it is only the ball or the first couple of balls near the pad?

A. I would not say how many; it might probably be three of them that runs against it, that rests on the horse's ankle.

X Q. But it would not be more than three?

A. I do not think it would. A horse's ankle could not project much further, but the balls rests on the horse's ankle.

X Q. And this is the part of the striker that you mean strikes the leg of the horse, is it not?

179 A. The ankle of the horse; yes, sir.

X Q. Do these strikers in these two devices which you have produced project outwardly as much as they did when you first purchased them from the Lees?

A. Well, I would not say positively. They may be stiffer, or they may have fell; I couldn't say, may hang lower or stand more straight.

X Q. Were you acquainted with John Chestnut, a blacksmith who used to be on Filbert street?

A. No, sir.

X Q. Are you acquainted with Henry Deamer, Jr., a harness-maker at 1520 Market street?

A. No, sir.

By Mr. BLISS:

X Q. You have testified that you have used in Mr. Kendrick's stable about two dozen of these Busch dangled boots?

A. Yes, sir.

X Q. Will you please state what has become of the others?

A. Well, I think worn out by the balls falling off and breaking.

X Q. Mr. Kendrick deals with Lee & Sons, does he not?

A. Yes, sir.

X Q. And he has had no quarrel with them?

(Objected to, as not proper redirect examination and as immaterial.)

A. Nothing at all, sir.

X Q. Have you any interest in this case?

(Objected to.)

A. Nothing at all.

(Signed) WM. E. WEEKS.

Adjourned to Tuesday, April 1, at 11 a. m.

180 MEETING, *April* 1, 1890.

Present: Counsel as before.

HENRY G. HAEDRICH sworn.

By Mr. BLISS:

Q. Please state your name, age, residence and occupation.

A. Henry G. Haedrich; 67; residence, 808 Windsor square; occupation, harness-maker.

Q. How long have you been engaged in the harness business in this city?

A. Ever since 1848. I went into business in 1848.

Q. Were you engaged in business working for some one else before that time?

A. Yes, sir.

Q. You are familiar with what are known as interfering boots for horses, are you not?

A. Yes, sir.

Q. Do you know what is called the Haughey interfering boot?

A. I know it now. I never knew it by that name before I saw it here. I saw several of them on sale in my store.

Q. How long have you had such boots on sale in your store?

A. To the best of my knowledge, within the last year or two.

Q. Prior to that time, have you ever seen in this city or elsewhere an interfering boot having a pendant like this one which I

now show you, marked "Complainant's Exhibit Copy of Deamer Device"?

A. I never saw any boot whatever with a dangler on it.

Q. And you never saw anything like that?

A. No, sir.

Q. Are you acquainted with Henry Deamer, Sr., the old gentleman?

A. Yes, sir.

181 Q. Do you know how long he has been in the harness business?

A. I think a considerable time before I was. I knew of him when I first came to Philadelphia, and that was in the fall of 1844. I came to Philadelphia in 1844, and he was in business then. He was one of the first men I got acquainted with. He did a big business at that time.

Q. Is he still living?

A. Yes, sir; to my knowledge, unless he died last night. He is very old and seems to be very feeble just now. I see him passing the store occasionally.

Q. He is able to go out?

A. Oh, yes. He looks pleasant and cheerful. We always have a few words together when we meet.

Cross-examined.

By Mr. HUNTER:

X Q. About how old, if you know, is Henry Deamer, Sr.?

A. I understood he was in the eighties; he is pretty well on.

X Q. He is a very old man, is he not?

A. I guess he must be in the neighborhood of 85 or 86, to the best of my knowledge.

X Q. Where is your place of business?

A. 1534 Market.

X Q. How long have you been there?

A. I think some six years ago. My memory is very deficient in dates. I cannot remember figures very well now.

X Q. You have stated that you never saw any boot whatsoever with a dangler on it?

A. No, sir; not until I saw this.

X Q. Did you never see a leg strap for attachment to a horse's leg with a chain hanging from it?

A. We used to make that for kicking horses. I made them myself.

X Q. You have made them very often, have you not?

182 A. Very often for kicking horses.

X Q. How long did you make this chain?

A. Generally from about twelve to fourteen inches.

X Q. Did you ever make it shorter than twelve inches?

A. No, sir; because when a horse kicks the action of the chain strikes the back of its leg and gives the benefit. If it was short it would not answer the purpose.

X Q. This kicking chain was something similar to that which I now show you?

A. Yes, sir.

(The device shown witness is that marked "Respondents' Exhibit E.")

X Q. Have you never heard of these devices being made with shorter chains such as exhibited in this device which was shown you for use for the purpose of speeding colts?

A No, sir; never heard of it.

By Mr. BLISS:

X Q. Would it be possible to use such a chain as Mr. Hunter has spoken of on a trotting horse to prevent interfering?

A. No, sir. It would be the height of folly to attach anything to a horse with a chain. It would cut his ankles all to pieces.

X Q. You say that you frequently see Mr. Deamer on the street and have a few words with him. Do you ever speak with him about old times?

A. In a general way. We have our little jokes together of what happened years ago.

X Q. Have you noticed that his mind is failing in any direction?

A. No, sir. I think his mind is just as clear and as bright as it ever was. The only thing that I see is, he looks feeble and old age shows itself.

X Q. But you think it has not impaired his mind or memory in any way at all?

A. His mind is just as clear as ever it was.

183 By Mr. HUNTER:

X Q. He is very feeble, however, is he not?

A. Yes, sir. This last year or two back he stoops over and walks with a cane, which I never saw until he got so feeble. He never walked with a cane before; he always was sprightly. I have not seen him for some four or five weeks on the street, and, of course, he might have got more feeble every day. The weather has a good deal of effect upon an old person. Generally on a fine day I see him going round to the store.

X Q. When you speak of him being bright in his mind, you mean he is bright for a man of his years?

A. Yes, sir. I do not see any difference in his conversation as if his mind was impaired.

(Signed) HENRY G. HAEDRICH.

Adjourned to Wednesday, April 2, at 3 p. m.

MEETING, *April* 2, 1890.

Present: Counsel as before.

FRANK J. AYERS sworn.

By Mr. O'BRIEN:

Q. State your name, age, residence and occupation.
A. Frank W. Ayers; 31; 133 North Ninth street; horse-boot maker.
Q. How long have you worked at your trade of making horse boots in this city?
A. About one year.
Q. Are you familiar with the interfering boot for horses known as the Haughey interfering boot?
A. Yes, sir.
Q. How long have you been acquainted with that style of boot?
184 A. The only time I ever seen it has been since Mr. Morgan has been making them.
Q. Have you seen and are you acquainted with a boot similar to that which I now show you?
A. I have seen these boots on horses; yes, sir.

(Witness is shown "Complainant's Exhibit Kendrick Boot A," and "Complainant's Exhibit Kendrick Boot B.")

Q. Where have you seen them upon horses?
A. I seen several pair of them on horses at Mr. Kendrick's stable on Race street.
Q. Were they in use when you saw them?
A. They were; yes, sir.
Q. Do you know William E. Weeks?
A. Yes, sir.
Q. You have reference to the stable of Charles H. Kendrick, on Race street, in this city?
A. Yes, sir.
Q. You may please state whether or not these boots that you saw similar to "Exhibits Kendrick Boot A and B," hung down in the same manner when on the horse's foot, as they do in the exhibits that I have shown you.
A. Perfectly straight down just as they are there.
Q. As loose as that is?
A. Just as loose as that is.
Q. Have you noticed it specially?
A. I have noticed it specially, and I seen a pair on a horse the other day right in front of the shop, go by; they hung just the same as that, straight down.
Q. In the boots of this make like Exhibits A and B which you have noticed on horses in this city, have they in every instance hung down loosely in the same manner?
A. All that I seen hung that way.

Cross-examined.

By Mr. HUNTER:

X Q. You say you saw one of these boots on a horse the other day and that the pendant "hung down." Did you examine that boot?

185 A. Not closely, no sir.

X Q. How close were you to it?

A. Well, that one the other day I wasn't anywheres near enough to touch the horse, but I have been close enough to them to examine them.

X Q. Have you seen the Haughey boot on horses?

A. Yes, sir.

X Q. Is it not one of the Haughey boots you are referring to when you say it hung down?

A. No, sir.

X Q. What do you mean by "hung down"?

A. This string of balls hanging down perfectly straight that way, just the same as that.

X Q. Then they did not hang the way they are now?

A. Well, that is very near—I have seen them hang further down than that.

X Q. When?

A. On horses that I seen them on in Kendrick's stable that hung perfectly straight down, just as straight down as they could possibly get them. The weight of the balls would bring them down, and they couldn't get any further.

X Q. How long ago did you see one of these boots similar to this Kendrick boot in which the striking portion hung straight down? By "straight down" I do not mean as it appears in this Exhibit Kendrick Boot A, but perfectly straight as in the Haughey boot.

A. How long ago has it been?

X Q. Yes, when was it?

A. Well, I cannot tell exactly. It must have been about six weeks ago, probably a little more than that. It was when I was in Mr. Kendrick's stable. I seen it on a horse.

X Q. Did you see it only once?

A. I was there at his stable twice, and I seen them on horses both times.

X Q. And it was hanging down perfectly straight?

A. Just as I showed you there a minute ago.

X Q. You mean as it is in this exhibit?

186 A. Hanging just as straight down as it possibly could hang.

X Q. Not like it is in this exhibit?

A. It was hanging more than this.

X Q. How much more than that?

A. Just as much more as it would take to straighten those balls out.

X Q. Do you know where that boot is now?

A. That I saw?

X Q. Yes.
A. No, I do not.
X Q. Did you examine it closely and take it in your hand?
A. No; I did not take it in my hand.
X Q. How near were you to it?
A. As close as I am to you.
X Q. Did it rest on the horse's leg?
A. Yes, sir; right against his leg.
X Q. Didn't it stick out?
A. Not a bit, sir.
X Q. Was it buckled above the pastern joint?
A. Buckled above the joint; yes, sir.
X Q. Did it rest on the hock?
A. Rested right on his leg.
X Q. And didn't stick out?
A. Didn't stick out; no sir.
X Q. Was the horse moving?
A. The horse was standing still when I seen it.
X Q. Have you ever seen them on a horse when the horse was moving?
A. Yes, sir; I seen a pair on a horse.
X Q. When?
A. I think it was the day before yesterday.
X Q. Did they hang down straight then?
A. Yes, sir.
X Q. Perfectly straight?
A. Well, they could not stay there when the horse was walking, but they were hanging right down against his leg.
187 X Q. They rested on the hock?
A. Yes, sir.
X Q. Then they must of necessity have stuck out, must they not?
A. Not necessarily; they could not hang any lower.
X Q. When these devices are attached to the horse, does not the joint of the horse's leg project beyond the pad?
A. Well, very little more, if any.
X Q. It does not project any?
A. That pad would bring it very near even with the hock joint.
X Q. You never have seen this on a horse that was moving rapidly, have you?
A. No, sir.
X Q. You have only seen them on a horse that was standing in the stable or moving round?
A. Standing in the stable, and, as I have said, I seen a pair on a horse the other day that was moving along on the street.
X Q. And then they hung similarly to what they do in the exhibit?
A. Yes, sir.
X Q. You never noticed how they operated when the horse was moving rapidly, did you?
A. No, sir; I never seen one on a horse that was moving rapidly.
(Signed) F. J. AYERS.

THOMAS MORGAN affirmed.

By Mr. BLISS:

Q. Please state your age, residence and occupation?

A. Forty-one; 1303 North Twelfth street; specialty in horse boots.

188 Q. How long have you been engaged in the business of manufacturing or selling horse boots?

A. In the neighborhood of 15 years, I should judge.

Q. Where is your place of business?

A. 329 and 331 Arch street.

Q. Have you been familiar with various devices used for preventing interfering in horses during the last fifteen years?

A. Yes, sir.

Q. Are you acquainted with a device which is provided with a pendant or dangle, loosely jointed to a strap, passing round the horse's leg?

A. Yes, sir; I know Haughey's.

Q. How long have you known that device?

A. I cannot exactly state when I got the license. It was somewhere round in the neighborhood of two years ago.

Q. Have you been in the habit of noticing particularly horse boots of various kinds which have been in use in Philadelphia?

A. Yes, sir, and in other cities.

Q. Have you ever, prior to becoming acquainted with the Haughey device, seen or heard of any device provided with a pendant or dangle loosely jointed to a strap passing round the horse's leg?

A. No, sir.

Q. I call your attention to Complainant's Exhibit Copy of Deamer Device, and ask you whether, prior to your former examination in this case about a month ago, you had ever seen or heard of the use of such a device.

A. I never seen this until Mr. O'Brien showed it to me previous to my last examination. I heard Mr. Deamer hint at something of the kind, but I had never seen it until Mr. O'Brien showed it to me.

Q. When did you hear Mr. Deamer hint about it?

A. I was in his place one day; I don't know when it was.

Q. Was it after this suit was begun?

A. No, sir; I think it was before.

189 Q. Well, how long ago was it?

A. I couldn't say.

Q. You can simply state whether it was ten years ago or five years ago.

A. Well, it is within the last two years; it is since I commenced selling these boots.

Q. Do you frequently come in contact with the owners and trainers of horses?

A. Yes, sir; most every day of my life.

Q. Can you give me the names of a few persons for whom you have done work?

A. I have worked for Crit Davis, driver of Prince Wilkes; Wm. H. Doble and Dodd Irwin, trainer of Belmont driving park, in this city. Mr. Doble has retired, I believe, from training.

Q. Mr. Doble is better known as "Bud" Doble, is he not?

A. No, that is his father. I have worked for "Bud" Doble. I made some goods for him last summer.

Q. What owners of horses have you done work for?

A. George Singerly, Robert Steele, Mr. Henry, John P. Crozier. I might go on and name quite a number of them—Harrison Bros., Disstons.

Q. And during all of your experience with these and your other customers, you have never come in contact either with this Deamer device, or with any interfering boot containing a pendant or dangle loosely jointed to the leg strap?

A. No, sir.

Q. Have you made inquiry among the harness-makers and saddlers, and owners and users of horses in this city as to whether such a device as the Deamer device had ever come to their knowledge?

A. I have.

Q. Will you name a few persons to whom you have spoken?

A. I could hardly name any of them, because it was kind of a general question.

190 Q. Have you found any one among these parties from whom you made inquiry who knew or had heard of the Deamer device?

A. I never heard any of them say anything about the Deamer device or any other one that I know of—that is, of that dangle.

Q. You are the licensee for the Haughey boot in this city, are you not?

A. Yes, sir.

Q. Are you familiar with the alleged infringing boots manufactured and sold by the defendants, Jesse Lee & Sons?

A. I have seen a number of them.

Q. Have you purchased or caused to be purchased any of those boots?

A. I had a pair purchased for me.

Q. Who purchased them for you?

A. One of my boys. I sent him there, and he bought a pair.

Q. Is that one of the boots purchased by your boy?

A. That is one of the boots; yes, sir.

Q. How do you identify it?

A. I had it marked here, and I know it by the six black balls.

Q. Is that boot in the same condition now that it was when it was bought?

A. About the same; yes, sir.

Q. At the time it was bought did the pendant hang down?

A. Just about what it is now. I don't know of anything being done to it. It could not be otherwise.

(The device shown witness is offered in evidence and marked "Complainant's Exhibit Morgan Purchase.")

Q. Would this boot which you had purchased from Jesse Lee & Sons operate in the same way and accomplish the same purposes as the Haughey boot?

A. Yes, sir.

Q. Do you find considerable demand for the Haughey boot?

191 A. The demand was pretty large before this infringement, as I call it, came along, and the demand is increasing since it ended.

Q. The infringement you refer to is——

A. The Lee boot, or known as the Busch boot, whatever you may call it.

Cross-examined.

By Mr. HUNTER:

X Q. You have stated that Mr. Deamer hinted to you that he had at one time made such a device as that exhibited in the Exhibit Deamer Device. Will you please tell me more definitely, if you can, when it was that Mr. Deamer hinted this to you?

A. Since these boots have been sold; since I have been selling these boots. I was out there one day and stopped in his place, and he hinted at something of the kind. There was nothing definite about it, and I just simply said whenever anything came out on the market, there were hundreds of people knew all about it.

X Q. What led Mr. Deamer to make this remark; what did he say?

A. I cannot remember now what was said. I did not pay any attention to it really at the time.

X Q. Did he say that he had made a boot employing a dangle?

A. I do not know; I cannot remember. I did not think I would ever have any use for the information.

X Q. However, from whatever he did say, you understood that he referred to some boot that he had made which was similar to the Deamer device?

A. I do not know what it was he was alluding to.

X Q. Then why do you say that Deamer hinted about this device?

A. I do not know what kind of a boot he was alluding to at all.

X Q. Did he not refer to any particular kind of boot?

192 A. I judge he was referring about the dangled boot I was selling. I did not know what it was; I had never seen it.

X Q. Did he refer in this conversation with you to the Haughey boot?

A. He referred to the boot that I was selling, I believe.

X Q. He expressed an opinion that it was not new, did he not?

A. I don't know as he did.

X Q. Why did you tell him then that whenever any one brought out anything new there were lots of people who knew about it before?

A. To avoid any conversation that might arise from it.

X Q. Why should you have said that if he had not made any

remark to the effect that he did not consider the Haughey boot new?

A. He said he had made something, at some time or other, some kind of a boot, and I said to him there and then that there were always hundreds of those people when a new thing came along who would refer to something they had made, or that had been made maybe a hundred years before.

X Q. You first went to hear what he had to say?

A. I did not have any conversation at all, because I hear all kinds of things in my business.

X Q. You had heard of other things of the same kind?

A. No, no; I say I hear all kinds of things in my business, and I haven't got time to spend holding two or three hours conversation.

X Q. Is Mr. Deamer the only person that ever hinted to you that the Haughey boot was not novel?

A. I believe John Hunter said that he knew something; I don't know what he knew.

X Q. Do you know whether John Hunter ever made a dangled boot?

A. I don't know. I only know what he said.

X Q. Do you know whether John Hunter sells the Haughey boot?

A. He bought some from me at about that time.

193 X Q. Do you know what John Hunter paid for the Haughey boot?

A. Yes, sir; but I would like to see my book first.

X Q. What do you sell the Haughey boot to harness people for?

(Question objected to as incompetent and irrelevant.)

A. I do not think that what I sell my goods at has got anything to do with the case.

X Q. Do you refuse to say what you sell the goods for?

A. I do not think that has got anything to do with the case.

X Q. Do you refuse to say?

(Counsel for the complainant objects, because the witness has stated that he cannot say without referring to his books, and that is a sufficient answer to the question.)

(Counsel for the defendants calls attention to the fact that he has not stated anything of the kind.)

The WITNESS: I do not think it is right for me to open my books for the sake of opposition. This man is in opposition to me, and I do not propose to say what my boots sell at. I judge I get $1.20 a pair, but I do not see what that has got to do with this case.

X Q. Does John Hunter pay $1.20 a pair?

A. I think John Hunter paid me $1.20.

X Q. Do you know that he did pay you $1.20?

A. I can tell you by looking at my books what he paid.

X Q. Don't you know that he does not pay you $1.20?

A. I do not know anything of the kind.

X Q. When did John Hunter tell you that he had made a boot similar to the Haughey boot?

A. When he ordered those boots.

X Q. When was that?

A. I told you I could not tell you unless I referred back to my books.

X Q. Did he describe the boot which he claimed to have made?

A. He said he made a boot with a couple of balls on. That is about all I can say.

194 X Q. With a couple of balls forming a dangle?

A. I don't know how, sir; I cannot say.

X Q. He did not say that they formed a dangle?

A. He said he made a boot similar to that.

X Q. Similar to what?

A. Dangle.

X Q. The Haughey boot?

A. Well, have it the Haughey boot, if you wish. He said something about the rubber balls.

(This line of examining is objected to by the complainant's counsel for the reason that it is not proper cross-examination.)

X Q. Did not Hunter say that he would continue to make them if he wanted to?

A. No, sir; he did not. He said it was cheaper for to buy them.

X Q. Did not Hunter say that he did not consider the Haughey patent to be good?

A. I notified him that if he made them he would be prosecuted.

X Q. Why did you notify him that he would be prosecuted?

A. Because I understood he was going to make them.

X Q. What made you suppose he was going to make them?

A. From what he had said.

X Q. What did he say that made you suppose he was going to make them?

A. Didn't I tell you he was going to make something similar to them?

X Q. Did not he say he was going to make them?

A. I notified him that if he did he would be prosecuted.

X Q. He did not make any?

A. I don't know. Mr. Hunter will have to answer that question.

X Q. You never saw any that he made?

A. No, sir.

195 X Q. At any time?

A. No, sir.

X Q. Did you ever hear of any that he made at any time?

A. No, sir; only from what he said himself.

X Q. Did he not tell you that he would continue to make them unless you sold them about as cheap as he could make them?

A. He said as cheap as I could sell them to other people; that was $1.20. I mean that if he took a quantity I would give him a discount, which is $1.20.

X Q. And that is the same price you sell them to other people?

A. That is the price that is stipulated in the agreement with Haughey.

X Q. With Hunter?

A. No, sir; with Haughey, at $1.20. I sold them to him at $1.20. The price is $1.50, with 20 off.

(Question repeated.)

A. That is the price I sell them to other people.

X Q. Then you sell these boots to John Hunter for the same price that you sell them to other people; is that so?

A. Yes, sir.

X Q. You did not sell them any less to John Hunter?

A. No, sir; he paid me $1.20, I think. Of course there is a trade discount for spot cash of two per cent., but I do not think he got that two per cent.; I think he paid $1.20.

X Q. Are John Hunter and Henry Deamer the only persons that ever suggested to you that the Haughey boot was not new?

A. Mr. Miller spoke something about some arrangement.

X Q. Did Mr. Miller tell you what it was?

A. Something like a string and a chain.

X Q. When did he speak about this?

A. One day at Belmont track. I have not kept trace of the time since I have been selling these dangled boots.

X Q. What caused him to speak about it?

196 A. He had seen the dangled boots and called my attention to them, and said, "Are you selling them?" and I said "Yes." I think he said something about seeing a string and a chain somewheres round Norristown.

X Q. Have you ever seen a leg strap with a chain attached to it used on a horse?

A. I have seen a chain on a strap for kicking purposes.

X Q. How long was the chain?

A. They were different lengths.

X Q. What is the shortest length you have seen them?

A. I would not like to say.

X Q. Was it 8 inches?

A. I have seen them longer.

X Q. Have you seen them shorter?

A. I would not like to answer that question, because I have come in contact with so many of these things that it would be a pretty hard thing for me to say. To the best of my knowledge, it would be from 14 to 18 inches; somewheres round there; it depends on what the purpose is, heavy or light.

X Q. You have never seen a strap with a piece of chain 3 or 4 inches long used for the purpose of speeding colts?

A. Make that plain, and then I will answer it.

X Q. Have you ever seen a strap with a piece of chain 3 or 4 inches long used upon a colt for any purpose whatsoever?

A. No, sir; I do not think I have.

X Q. Are you sure?

A. Well, I would not want to be positive about it, though I

might have had it on for kicking, but never for interfering or for driving fast.

X Q. Then you think you have seen upon a horse a strap with a chain 3 or 4 inches long?

A. No; I did not say anything of the kind. I said I had seen a chain and strap a foot long for kicking purposes; something like that.

X Q. My question is this: Have you ever at any time seen upon a horse for any purpose whatsoever a strap and a chain 3 or 4 inches long hanging from the strap?

197 A. I do not think I have.

X Q. You are not positive that you never have?

A. I am positive that I have never seen it that short.

X Q. Well, that is my question.

A. I do not believe I have ever seen such a thing as that so short.

X Q. Have you seen it 5 inches long?

A. I said I have seen them somewhere round a foot and over.

X Q. And never shorter than a foot?

A. Not to my knowledge.

X Q. And never saw them used for any other purpose than kicking?

A. No, sir.

X Q. You are sure of that?

A. I am pretty near sure.

X Q. Are you quite sure?

A. Well, that is a question I would not like to answer.

X Q. Why not?

A. Because I am not able to answer it rightly.

X Q. Why are you not able to answer it?

A. It might have escaped my memory; I say to the best of my knowledge I have not.

X Q. To the best of your knowledge then you have never seen in use upon a horse a strap with a chain shorter than 8 inches or a foot?

A. I would not like to go as far as that. If I had a rule, I might know the exact measurement.

X Q. It is possible then that you might have seen it shorter than 8 inches?

A. No, sir; I did not say so.

X Q. But it is possible you may have?

A. No, sir; it is not.

X Q. Were those chains similar to this which I now show you, marked "Respondents' Exhibit E"?

A. Something like that; yes, sir.

198 X Q. You never saw them as short as that marked "Respondents' Exhibit A"?

A. I do not think I have ever seen them as short as that before. You are pressing me pretty close on a question of that kind. I might have seen it, and my memory be defective on it, but to the best of my knowledge I have not. Those I have come in contact with have been longer.

X Q. It was such a device as this marked Respondents' Exhibit A that you understood Mr. Miller to refer to, was it not?

A. I can hardly say what he was referring to.

X Q. But it was, as you understood it, a strap with a chain?

A. I do not know whether it was a strap or a string.

X Q. It was something with a chain hanging from it?

A. It was something which he could hardly describe himself.

X Q. Was there a chain hanging from this strap or whatever it was?

A. That is a hard thing for me to say. It was a chain or bones, or something of that kind.

X Q. It was a pendant, whatever it was. What did he say?

A. He said he had seen something similar to that used at Norristown.

X Q. Was that all?

A. I think he said he had seen a piece of chain used on a string.

X Q. This was before this suit was commenced, was it not?

A. Yes, sir; this was one day at Belmont.

X Q Then when you testified that you had never heard of any pendant boot before, you meant with the exception of this so-called kicking chain?

A. I do not call that a pendant boot.

X Q. And with the exception of what you have heard said by Mr. Deamer, by Mr. Hunter and by Mr. Miller?

A. I believe that is all.

199 By Mr. BLISS:

Q. These conversations that you had at various times with Mr. Hunter and with Mr. Miller and with Mr. Deamer were all called out by the Haughty boot, were they not?

A. Yes, sir.

Q. And they knew that that was a patented boot?

A. Yes, sir.

Q. And they said in an indefinite way that they had made something at some other time that conflicted or anticipated this Haughey patent?

(Objected to.)

A. That bore some resemblance to it.

Q. None of these people described exactly what they had made?

A. I could gain nothing from any of them at all excepting Hunter said that he had seen something like the balls. That is about the nearest I could hear.

Q. You have been shown a chain attached to a leg strap, would it be possible to use a device of that kind upon a trotting horse to prevent interfering?

A. I should say not.

Q. Why could not such a chain be used?

A. Because it would injure him.

Q. In what way would it injure him; explain yourself a little more fully.

A. A chain of that length would be very apt to wrap round his opposite leg or the leg it was on, and possibly throw him.

Q. Suppose the chain was not long enough to wrap round the leg, could you use a short chain?

A. No, sir; I would not dare to use it; it would cut and bruise him.

By Mr. HUNTER:

X Q. Have you ever seen a chain used for this purpose for preventing interfering?

A. Not to my knowledge. I have testified once, and should say, no, sir.

200 X Q. In your statement that a chain would cut the horse's leg if used for this purpose, it was merely your opinion and not from observation, was it?

A. By common sense.

X Q. That is all. It is your common sense?

A. My own judgment in respect to the knowledge I have in the past of different appliances.

(Signed) THOS. MORGAN.

Adjourned to Thursday, April 3, 1890.

MEETING, *April 3d*, 1890.

Present: Counsel as before.

(Counsel for complainant states that the witness is produced at the request of counsel for the defendants for further cross-examination having reference to the witness, Dr. James A. Marshall.)

(Counsel for respondents waives further cross-examination.)

(It is stipulated and agreed by and between counsel that complainant may offer in evidence copies of the file-wrapper and contents of letters patent No. 379,644, granted to Michael Haughey, and of letters patent No. 433,854, granted to Walter Lee, assignee of Charles L. Busch.)

Evidence closed.

APRIL 3D, 1890.

I hereby certify that the foregoing depositions from page 1
201 to page 48 inclusive, taken on behalf of the complainant in rebuttal before me as special examiner, were reported by me stenographically; that the same were reduced to writing by me, and that the same are correct and true.

[SEAL.] WM. A. SHAW,
Notary Public.

Complainant offers in evidence certified copy of file-wrapper and contents in the matter of letters patent granted to Michael Haughey, March 20, 1888, No. 379,644, for improvement in interfering device for horses. Also, certified copy of file-wrapper and contents in the matter of letters patent granted to Charles L. Busch, assignee to Walter Lee, March 18, 1890, No. 423,854, for improvement in horse boot.

202 DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file-wrapper and contents in the matter of the letters patent granted Michael Haughey March 20, 1888, number 379,644, for improvement in interfering device for horses.

In testimony whereof I, C. E. Mitchell, Commissioner [SEAL.] of Patents, have caused the seal of the Patent Office to be affixed this 17th day of February, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fourteenth.

C. E. MITCHELL,
Commissioner.

COMPLAINANT'S EXHIBIT COPY OF FILE-WRAPPER & CONTENTS HAUGHEY PATENT.

203 Amount received, $20.
Cert.

——— ———,
Chief Clerk.

ST. LOUIS, *Feb'y 24th*, 1888.

Hon. Commissioner of Patents, Washington, D. C.

DEAR SIR: Enclosed I send final fee in the matter of Michael Haughey's application ≠ 250,462 for a patent on interfering strap for horses, viz., sub-treasurer's certificate of deposit No. 399, issued by the sub-treasurer at St. Louis, Mo., for the sum of $20.

Yours truly, E. J. O'BRIEN,
Att'y for Applicant.

[Endorsed:] B. 20998. O. U. S. Patent Office. Rec'd Feb. 27, 1888.

204 ST. LOUIS, MO., *Sept. 19th*, 1887.

Hon. Commissioner of Patents, Washington, D. C.

DEAR SIR: Enclosed I send application of Michael Haughey, of this city, for a patent on "interfering strap," viz., petition, power of att'y, dr'w'gs, specifications, & oath, together with ass't treasurer's receipt ≠ 378, at this city, for $1,500 fee for filing same.

P'r E. J. O'BRIEN.

205 *Petition with Power of Attorney.*

To the Commissioner of Patents:

Your petitioner, Michael Haughey, a citizen of the United States, residing at the city of St. Louis, in the State of Missouri, prays that letters patent may be granted to him for the improvement in "devices to prevent horses interfering," set forth in the annexed specification, and he hereby appoints Edward J. O'Brien, of the city of St.

Louis, State of Missouri, his attorney, with full power of substitution and revocation to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

MICHAEL HAUGHEY.

206 To all whom it may concern:

Be it known that I, Michael Haughey, a citizen of the United States, residing at the city of St. Louis, in the State of Missouri, have invented a new and useful improvement in "devices to prevent horses interfering," of which the following is a specification:

My invention relates to improvement in interfering straps or devices that are fastened on the horse's legs at or near the point where the horse may strike or interfere while moving about, usually above the pastern joint, and the object of my improvement is, first, to provide against a horse striking or interfering by means of a pendant that will move and swing freely between his legs from a loose joint at one or more points of attachment to a strap fastened around his leg; second, to provide means for holding the pendant on the horse's leg in any desired position that it may be placed in; and, third, to reduce the friction incidental to the act of striking.

I attain these objects by the mechanism illustrated in the
207 accompanying drawing, in which figure 1 is a perspective view of my improvement, and figure 2 a similar view of the same, showing another form of swinging pendant.

Similar letters refer to similar parts in both figures.

Of the several modes *of* providing against the injury to an animal caused by repeated striking of its legs, the one against the other, and commonly called "interfering," the aim in all of them appears to be merely to afford protection to the parts of contact without regard to effecting a permanent cure whereby the use of an interfering strap will be rendered unnecessary. This latter object is attained by the use of my device, inasmuch as the motion of the horse's legs has the effect of giving to the pendant a swinging tangential motion, whereby the leg opposite to the one provided with my strap is touched before contact or conjunction of the two limbs with the pendant between, and the information thus communicated has the effect upon the horse of making it strive to avoid the touch of the swinging pendant. This he can only
208 do by moving with his legs spread sufficiently apart to avoid it, and in this way he soon loses the habit of striking.

In the drawing, A, figure 1, is a plain leather strap provided with an ordinary buckle or means for fastening the same around the leg of a horse. Upon the inside and near the buckle end of said strap I attach a small disk, C, made of leather or other suitable material, and fasten*d* the same in place, around said —, with the rivet C. D is another disk similar to C, and facing on the inside of the strap A, to which it is attached by a loop, D, passing ar*o*und said strap or otherwise so as to slide freely on the same. It is also padded or raised on the inside so as to fit the depressions in the horse's leg, and thus hold the parts in place.

B is the pendant, which consists of the stem b^5, lugs b and b, ring b^3, and annular sections b^2. These annular sections have an opening in their middle to admit them on the stem b^5, and they may be made of rubber, leather, wood, or other suitable material. This form, however, is not essential, as the pendant may be made in one
209 piece, loosely fastened at the top. The upper end of the stem b^5 is lapped around the ring b^3 and fastened, and the whole is loosely attached to the strap A by a strip, b^4, passing around the ring b^3 and fastened to the strap A by the rivet c^1.

Having thus fully described my invention, what I claim as new and desire to secure by letters patent is—

Substitute 1, Dec. 3, '87. The pendant, made of rubber, wood, or other suitable material, loosely fastened at one or more points to a strap passing around the leg of a horse, substantially in the manner shown and for the purposes set forth.

MICHAEL HAUGHEY.

Witnesses:
THOMAS BLUNDELL.
EDWARD J. BRICE.

210 *Oath.*

STATE OF MISSOURI, *City of St. Louis,* } *ss:*

Michael Haughey, the above-named petitioner, a citizen of the United States and resident of the city of St. Louis and State of Missouri, being duly sworn, deposes and says that he verily believes himself to be the original, first, and sole inventor of the improvement in "devices to prevent horses interfering" described and claimed in the foregoing specification; that the same has not been patented to himself or to others with his knowledge or consent; that the same has not, to his knowledge, been in public use or on sale in the United States for more than two years prior to this application, and he does not know and does not believe that the same was ever known or used prior to his invention thereof.

MICHAEL HAUGHEY.

Sworn to and subscribed before me this 19 day of September, A. D. 1887.

JAS. F. BRADY,
Notary Public.

[SEAL.]

My commission expires June 28th, 1889.

[Endorsed:] Serial No., 250,462; paper No. $\frac{1}{2}$. Application. Filed Sep. 22, 1887. United States Patent Office, Sep. 22, 1887.

[Paragraph enclosed between rules erased in copy.]

211 Copied.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Oct.* 19, 1887.

Mailed Oct. 20, 1887.

Interfering device. Sept. 22, '87. No. 250,462.

Michael Haughey, care Edward J. O'Brien, 14 N. 4th St., St. Louis

This matter has received consideration and the device shown and described appear- to be novel, but the claim fails to properly present it. The pendant is not shown or described attached to more than one joint; hence such statement in the claim is not provided for. A definite claim for the article shown and described will receive favorable consideration.

J. P. CHAPMAN, *Ex.*

[Endorsed:] Serial No., 250,462; paper No. 1. Letter dated Oct. 19, 1887.

212 ST. LOUIS, *Nov. 30th*, 1887.

Hon. Commissioner of Patents, Washington, D. C.

SIR: Referring to your communication of 19th inst. concerning Michael Haughey's application for a patent on improvement in "interfering devices," No. 250,462, and following the views therein given as to correction of inaccuracies in the claim, I amend the claim as follows, viz:

(1.) Strike out the word "one," on the third line of the claim, and insert the *word* "a" in lieu thereof.

(2.) Strike out the words "or more," on the same line. [Words.]*

(3.) Strike out the letter "s" from the word "points," on the fourth line of claim, so that the claim as amended shall read as follows, to wit:

1. Substitute 2, Dec. 12, '87.

"The pendant, made of rubber, wood, or other suitable material, loosely fastened at a point to a strap passing around the leg of a horse, substantially in the manner shown and for the purposes set forth."

Yours very respectfully,

MICHAEL HAUGHEY,
By E. J. O'BRIEN, *His Att'y.*

[Endorsed:] Serial No., 250,462; paper No. 2. Amendment 1. Filed Dec. 3, 1887. Canceled. United States Patent Office, Dec. 3, 1887.

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*[Word in brackets in pencil in copy.]
[Paragraph enclosed between rules erased in copy.]

213 $105\frac{1}{2}$.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Dec.* 5, 1887.

Mailed Dec. 6, 1887.

Interfering device for horses. Sept. 22, '87. No. 250,462.

Michael Haughey, care Edward J. O'Brien, No. 14 N. Front St., St. Louis, Mo.:

In the further treatment of this case, in connection with amendment filed the 3d inst., it is suggested that the claim therein be amended by prefacing the same with the words "The interfering device, consisting of:" also by substituting jointed for fastened and canceling the word- "fastened to a joint," so as to read loosely jointed to the strap.

J. P. CHAPMAN, *Ex.*

[Endorsed:] Serial No., 250,462; paper No. 3. Letter dated Dec. 5th, 1887.

214 ST. LOUIS, *Dec. 9th*, 1887.

Hon. Commissioner of Patents, Washington, D. C.

SIR: Referring to your communication from the examiner of 5th inst. concerning Michael Haughey's app'n for a patent on improvement in interfering devices for horses, filed Sept. 22, 1887, No. 250,462, on the further treatment of this case and in conformity with the suggestions therein contained, I respectfully ask leave to amend the claim as follows, viz: Preface the claim by adding the words "The interference device, consisting of;" (2) by substituting "jointed" for "fastened," and (3) by cancelling the words "fastened to a point," so that the claim as thus amended shall read thus:

The interfering device, consisting of the pendant, made of rubber, wood, or other suitable material, loosely jointed to
2. the strap passing around the leg of a horse, substantially in the manner shown and for the purposes set forth.

Resp'y, MICHAEL HAUGHEY,
By his att'y, E. J. O'BRIEN.

[Endorsed:] Serial No., 250,462; paper No. 4. Amendment 2. Filed Dec. 12, 1887.

215 2–024.

Issue division. Serial No., 250,462.

All communications should be addressed to "the Commissioner of Patents, Washington, D. C."

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
WASHINGTON, D. C., *Dec.* 14, 1887.

Michael Haughey, — Edw. J. O'Brien, 14 N. Fourth St., St. Louis, Mo.

SIR: Your application for a patent for an improvement in interfering device for horses, filed Sept. 22, 1887, has been examined and allowed.

The final fee, twenty dollars, must be paid and the letters patent bear date as of a day not later than six months from the time of this present notice of allowance.

If the final fee is not paid within that period, the patent will be withheld, and your only relief will be by a renewal of the application, with additional fees, under the provisions of section 4897, Revised Statutes. The office aims to deliver patents upon the day of their date and on which their term begins to run, but to do this properly applicants will be expected to pay their final fees at
216 least twenty days prior to the conclusion of the six months allowed them by law. The printing, photolithographing, and engrossing of the several parts preparatory to final signing and sealing will consume the intervening time, and such work will not be done until after payment of the necessary fees.

When you send the final fee you will also send, distinctly and plainly written, the name of the inventor and title of invention as above given, date of allowance (which is the date of this circular), date of filing, and, if assigned, the names of the assignees.

If you desire to have the patent issue to assignees, an assignment containing a request to that effect, with the fee for recording the same, must be filed in this office on or before the date of payment of final fee.

Additional copies of specifications and drawings will be charged for at the following rates: Single copies, uncertified, 25 cents; twenty copies or more, 10 cents each. The money should accompany the order.

Very respectfully, BENTON J. HALL,
Commissioner of Patents.

[Written across the face in red ink:] In remitting the final fee give the serial number at the head of this notice.

[On margin in red ink:] The within title is that given by the examiner in charge as most appropriate to your invention. Should you desire a change in the same, satisfactory reasons must be given therefor on or before the payment of the final fee.

217 (Serial number, 250,462.)

1887. (Ex'r's Book $\frac{1495}{129}$.)

Patent No. 379,644. Chapman.

Michael Haughey,
Of St. Louis,
County of ——,
State of Missouri.

Invention: Devices to prevent horses interfering.

Parts of application filed.
- Petition, Sept. 22, 1887.
- Affidavit, " " "
- Specification, " " "
- Drawing, " " "
- Model not required.
- Specimen, ——.
- First fee, cash, ——.
- " " cert., $15, Sept. 22, 1887.

2. App. filed complete " " "

Examined Dec. 5, '87. Chapman, ex.

Countersigned: T. W. Dick Bullock, for Commissioner, Dec. 14, '87.

Notice of allowance, Dec. 14, 1887.

Final fee cert., $20, Feb. 27, 1888.
" " cert., 188–.

Patented Mar. 20, 1888.

3. Att'y or P. O. address, Edw. J. O'Brien, 14 N. Fourth St., St. Louis, Mo.

218 1887.

Contents.

½. Application, 1 paper.
1. Letter, Oct. 19, '87.
2. Amend't 1, Dec. 3, '87.
3. Letter, Oct. 5, '87.
4. Amend't 2, Dec. 12, '87.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14. 54—harness.
15. Horse boots.
16.
17.
18.
19.

20. Title: Improvement in interfering devices for horses.
B. A. J.; E. C. C.
For copy of specifications and drawings see Compl'ts' Ex. Compl'ts' Patent.

$218\frac{1}{2}^{11}$ (2–175.) $20.50 p'd.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file-wrapper and contents in the matter of the letters patent granted Charles L. Busch, assignor to Walter Lee, March 18, 1890, number 423,854, for improvement in horse boot.

In testimony whereof I, C. E. Mitchell, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 13th day of September, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fifteenth.

Seal Patent Office, United States of America.

C. E. MITCHELL,
Commissioner.

COMPLAINANTS' EXHIBIT COPY OF FILE-WRAPPER & CONTENTS, BUSCH PATENT.

$218\frac{1}{2}^{12}$ Amount received, $15. O. K. Chief clerk.

PHILADELPHIA, PA., *Sept.* 14, 1889.

Hon. Commissioner of Patents.

DEAR SIR: I herewith forward the application of Charles L. Busch for an improvement in interfering devices for horses.

My check for the first Government fee is hereunto annexed. Please advise me, at my Philadelphia office, of the filing of the application. There is one sheet of drawing with the application.

Very truly, R. M. HUNTER, *Attorney.*

[Endorsed:] U. S. Patent Office, Sept. 16, 1889. Chief clerk.

$218\frac{1}{2}^{13}$ To the Commissioner of Patents:

Your petitioner, Charles L. Busch, a resident of Philadelphia, county of Philadelphia, State of Pennsylvania, prays that letters patent may be granted to him for the improvement in interfering devices for horses set forth in the annexed specification; and he hereby appoints Rudolph M. Hunter, of 926 Walnut street, in the city of Philadelphia, State of Pennsylvania, his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

CHARLES L. BUSCH.

218½[14] *Specification.*

To all whom it may concern:

Specification describing an improvement in interfering devices for horses, invented by Charles S. Busch, of the city and county of Philadelphia and State of Pennsylvania.

Be it known that I, Charles L. Busch, of the city and county of Philadelphia and State of Pennsylvania, have — an improvement in interfering devices for horses, of which the following is a specification:

218½[15] My invention relates to interfering devices or trotting balls for horses, and it consists of certain improvements which are fully set forth in the following specification and shown in the accompanying drawings which form a part thereof.

The object of my invention is to produce a convenient and efficient apparatus for the purpose of preventing the kicking or striking of a horse by itself during motion. Many trotting horses carry their feet closely together, and during rapid motion are liable to strike one leg with the hoof of the other, often causing a serious injury. To prevent this, trotting balls or interfering apparatus have been devised, which are attached upon one leg of the horse and are adapted to strike the other leg if the two legs are brought too close together. In this manner the horse, to avoid having his leg constantly struck by the interfering device, is compelled to carry his feet further apart.

It has been sought to construct an interfering device consisting of a swinging part, which, while the horse is motionless, shall normally assume a perpendicular or approximately perpendicular position, but during the rapid motion of the horse shall be caused to swing out for the purpose of striking the leg. To this end a pendant of rubber or wooden balls has been employed loosely jointed in a perpendicular position to a strap secured to the leg of the horse. This loose joint, however, does not in practice accomplish the desired object effectively, as the tendency of the pendent, secured in this manner, is to swing in a perpendicular plane and not out or away from the leg into an approximately horizontal plane, as is desired. ʌ[7] (2)*

Insert 7, Jan. 30, '90.

Nov. 20, '89.

218½[16] It is the object of my invention to overcome this fault by employing a striker or projecting portion ʌ [pendant]† so supported that during the motion of the horse it will of necessity swing in a substantially horizontal plane and cannot strike the leg to which it is attached. ʌ This object I accomplish by the improvements hereinafter more fully disclosed and described.

Insert, Jan. 30, '90.

*[In pencil in copy.]
†[Word enclosed in brackets erased in copy.]

My invention furthermore consists of certain improvements in the construction and arrangement of the parts, whereby greater efficiency of operation and economy of manufacture are obtained.

In the drawings—

Fig. 1 is a perspective view of my improved interfering device.

Fig. 2 is a sectional plan view of the same; and

Fig. 3 is an illustrative view showing the arrangement and operation of the same when attached to the horse.

A is a strap or band formed with a loop, B, at about its middle. C is a covering of flexible material, such as rubber tubing, enclosing the strap or band A and having an opening through which the loop B extends. D are a series of balls of rubber or wood loosely strung upon the loop B to form the [pendent]* and supported thereon by a pin or bit of leather or other material, E, through which the loop B of the strap is passed. While I prefer to form the [pendent]* in this manner by means of the wooden or rubber balls D, it is apparent that it may be formed in any other convenient manner and of any suitable material, as my invention is not in any way limited to the particular construction of the [pendent]* itself.

Insert, Jan. 30, '90. striker

Insert, Jan. 30, '90. striker

Insert, Jan. 30, '90. striker

F is a pad or cushion secured to the flexible covering C and adapted to rest against the leg of the horse. I prefer to construct this pad F with a shield, G, having an opening, *g*, at its center, and to arrange the flexible covering C and *and* strap A between the pad and the shield, with the loop forming the [pendent]* extending through the hole *g* in the manner shown in the drawings. This gives greater firmness and affords a better support for the [pendent].* The pad is secured to the covering C by stitches *c*, the strap A being free. It is apparent that in place of making the flexible covering in one piece, extending through the pad, as shown, it may be made in two sections, each having its end secured to the pad by the stitches *c c*.

218½7 Nov. 20, '89. striker

" " striker

H is a cushion or pad of soft material, secured to the end of the covering C, to protect the leg of the horse from contact with the buckle I upon the end of the strap A, by which the device is attached to the animal. The end of the strap A, carrying the buckle I, is secured to the flexible covering C by stitches *i*, and the strap from this point throughout its entire length is free.

The advantages of this construction are manifold. The [pendent]* being formed on

Nov. 29, '89. striker

*[Words enclosed in brackets erased in copy.]

Insert 8, Jan. 30, '90.

a part of the continuous strap A may be tightened or loosened and lengthened or shortened at will.[8] The tendency of the

Nov. 20, '89.

striker
[pendant]* during the motion of the horse is to swing out into a horizontal plane, because at its opening, *g*, the least resistance is presented against this motion or on the two sides where the force acts directly through the length of the strap A. By employing the outer covering C the strap A at no point comes into direct contact with the leg of the horse,

Nov. 20, '89. 3.†

striker
so that the swinging of the [pendant]* does not produce a rubbing or chafing of the leg by reason of any motion that may be imparted to that portion of the strap encircling it, and the device may be tightly secured without inconvenience to the animal. The apparatus is constructed without the use $218\frac{1}{2}$[18] of metal, except for the buckle, and of fewer parts than are ordinarily employed, whereby it may be more economically manufactured and will possess greater durability.

Substitute 10, Feb. 14, '90. (2.)†

The mere details of construction here shown, while preferable, are not to be taken as limitations of my invention, as it is apparent that they may be varied in many ways without departing from the principles of it.

$218\frac{1}{2}$[19] Having now described my invention, what I claim as new, and desire to secure by letters patent, is:

(8.)†

1st. In an interfering device for horses, a strap, for attachment to the leg of the horse, having a pendant portion formed integral therewith.

(5.)†

2nd. In an interfering device for horses, a strap, for attachment to the leg of the horse, having pendant portion formed integral therewith, in combination with a covering for that portion of the strap encircling the limb.

Sub. 1, Nov. 20, '89. (7.)†

3rd. In an interfering device for horses, a continuous strap, adapted to be secured to the leg of the horse, formed with a pendant or loop extending from that portion thereof which encircles the leg.

(8.)†

4th. In an interfering device for horses, a continuous strap, adapted to be secured to the leg of the horse, formed with a pendant or loop extending from that por-

* [Words enclosed in brackets erased in copy.]
† [In pencil in copy.]
[Matter enclosed between rules erased in copy.]

tion thereof which encircles the leg, in combination with a device, adapted to strike the other leg, carried by said pendant portion or loop.

5th. In an interfering device for horses, a strap, for attachment to the leg of the horse, having a pendant portion formed integral therewith, in combination with a covering for that portion of the strap encircling the limb, connected with said strap at one end only.

(9.)*

6th. In an interfering device for horses, a strap, for attachment to the leg of the horse, having a pendant portion formed integral therewith, in combination with a covering for that portion of the strap encircling the limb and one or more pads, adapted to rest against the leg of the horse, carried by said covering.[4]

Insert 4, Dec. 23, '89.

218½[9a] In testimony of which invention I have hereunto set my hand.

CHARLES L. BUSCH.

Witnesses:
ERNEST HOWARD HUNTER.
S. T. YERKES.

218½[10] STATE OF PENNSYLVANIA, }
County of Philadelphia, } *ss*:

Charles L. Busch, the above-named petitioner, citizen of United States and resident of Philadelphia, in the county of Philadelphia and State of Pennsylvania, being duly sworn, deposes and says that he verily believes himself to be the original, first, and sole inventor of the improvement in interfering devices for horses described and claimed in the foregoing specification; that the same has not been patented to him or to others, with his knowledge or consent, in any country; that the same has not to his knowledge been in public use or on sale in the United States for more than two years prior to this application, and he does not know and does not believe that the same was ever known or used prior to his invention thereof.

[L. S.] CHARLES L. BUSCH.

Sworn to and subscribed before me this tenth day of September, 1889.

ERNEST HOWARD HUNTER,
Notary Public.

[Endorsed:] Serial No., 324,069; paper No. ½. Application, Filed Sep. 16, 1889. C. L. Busch. U. S. Patent Office, Sept. 16. 1889. Chief clerk.

*[In pencil in copy.]
[Matter enclosed between rules erased in copy.]

$218\frac{1}{2}^{11}$ Room 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Oct.* 30, '89.

Mailed Oct. 31, '89.

Interfering devices for horses. Sept. 16th, 1889. # 324,069.

Charles L. Busch, care R. M. Hunter, # 926 Walnut St., Philadelphia, Pa.:

As a criticism of the claims presented in this case, it is, perhaps, well to state that for the most part they are of a very indefinite character, and in nowise do they convey the structure which applicant has set forth as his invention.

Claim 1 is met in patents to Rossman of June 6th, 1865, # 48097, and Westbrook of July 2nd, 1872, class 54, horse boots. Claim 2 is also met by these patents. Claim 3 is met by Haughey of March 20th, 1888, # 379,644, same class as above. Claim 4 is also refused on the last-named patent.

Claim 5 is refused on Westbrook and Rossman and claim 6 by Haughey.

T. H. ANDERSON,
Assistant Examiner.

JOHN D. HYER, *Examiner.*

[Endorsed:] Serial No., 324,069; paper No. 1. Rejection. Dated Oct. 30th, 1889.

$218\frac{1}{2}^{12}$ PHILADELPHIA, PA., *Nov.* 19, 1889.

In the United States Patent Office.

Room 105.

In the Matter of the Application of CHARLES L. BUSCH for Imp't in Interfering Devices for Horses. Filed Sept. 16, 1889. Serial Number, 324,069.

Hon. Commissioner of Patents.

DEAR SIR: Amend the above application as follows: In line 1 of page 3 erase "pendent" and insert "striker or projecting portion." The term "pendent" that has been used is misleading, and the term "striker" would seem to be more correct.

Erase "pendent" and insert "striker" in lines 20, 22, and 26 of page 3, lines 2, 4, 18, 20, and 26 of page 4. To describe the applicant's striking device as a "pendent" might be misleading.

Erase the present claims and insert:

"1st. An interfering device for horses, consisting of a strap for attachment to the leg, having a swinging portion formed of one integral piece therewith and free to swing in a substantially horizontal plane to strike the other leg of the horse and prevent interfering."

Sub. 2, Dec. 3, '89. 1.

"2nd. An interfering device for horses, consisting of a strap for attachment to the leg, having a swinging portion formed of one integral piece therewith and free to swing in a substantially horizontal plane, and devices carried by said swinging portion to strike the other leg of the horse and prevent interfering."

Sub. 3, Dec. 3, '89.

"[3rd.]* 2. An interfering device for horses, consisting of a strap encircling the leg of the horse and having a portion of its length formed into a loop, and devices carried by said looped portion later-ly projecting to form a striker adapted to swing out and strike the other leg of the horse to prevent interfering."

Dec. 3, '89. $218\frac{1}{2}$[13]. Stet.

"[4th.]* 3. In an interfering device, the combination of a tubular piece adapted to encircle the leg of a horse, a strap extending throughout said tubular piece and having a swinging portion projecting through a hole in the side of said tubular piece adapted to form a swinging striker to strike the other leg of the horse and prevent interfering, whereby said strap does not come directly in contact with the legs of the horse."

"[5th.]* 4. In an interfering device, the combination of a tubular piece adapted to encircle the leg of a horse, a strap extending throughout said tubular piece and having a swinging portion projecting through a hole in the side of said tubular piece adapted to form a swinging striker to strike the other leg of the horse and prevent interfering, whereby said strap does not come directly in contact with the legs of the horse, and pads carried by said tubular piece."

[6th.]* 5. In an interfering device, the combination of a tubular piece adapted to encircle the leg of a horse, a strap extending throughout said tubular piece, attached to it at one end only and having a swinging portion, formed by a loop in the length of said strap, projecting through a hole in the side of said tubular piece adapted to form a swinging striker to strike the other leg of the horse and prevent interfering, whereby said strap does not come directly in contact with the legs of the horse."

The applicant's invention is now clearly distinguished from the devices shown in the references. It is a swinging interfering de-

* [Figures and letters enclosed in brackets erased in copy.]
[Matter enclosed between rules erased in copy.]

vice employing a striker which is adapted to strike the
218½[14] other leg of the horse. It is clearly different from the Haughey device, in which the pendant is formed separate and hinged or jointed to the leg-encircling strap. The applicant's device is a very different construction. Experience has demonstrated that the jointed pendant does not perform its function, and strikes the leg by which it is supported more frequently than the other leg.

Very truly, R. M. HUNTER, *Attorney.*

[Endorsed:] Serial No., 324,069; paper No. 2. Amendment 1. Filed Nov. 20th, 1889. C. L. Busch. U. S. Patent Office, Nov. 20, 1889. U. S. Patent Office, Nov. 20, 1889. Division XI.

218½[15] Room 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Nov. 21st*, 1889.

Mailed Nov. 25th, 1889.

Interfering devices for horses. Sept. 16, 1889. ≠ 324,069.

Charles L. Busch, care of R. M. Hunter, ≠ 926 Walnut St., Philadelphia, Pa.:

It has been long settled that to make a device of one piece which had formerly been made of two or *vice versa* requires no invention. Claim 1, presented by amendment of the 20th inst., is refused for the above reason and on the references of record.

Claim 2 is also refused for the above reason and references.

Claims 4 and 5 are alike, and one should be erased.

T. H. ANDERSON,
Assist. Examiner.

J. R. ROGERS,
Acting Examiner.

[Endorsed:] Serial No., 324,069; paper No. 3. Rejection. Dated Nov. 21, 1889.

218½[16] PHILADELPHIA, PA., *Dec.* 2, 1889.

In the United States Patent Office.

Room 105.

In the Matter of the Application of CHARLES L. BUSCH for Imp't in Interfering Devices for Horses. Filed Sept. 16, 1889. Serial Number, 324,069.

Hon. Commissioner of Patents.

DEAR SIR: Amend the above application as follows: I wish to call the examiner's attention to a vital point of difference between the applicant's device and that shown in the references, to wit: That the applicant's striker is not a depending pendant loosely

jointed to a leg strap and free to swing thereon, but, on the contrary, is a projecting striker supported by the leg strap in a laterally projecting position and approximately in a horizontal plane. The differences between the applicant's device and that cited is not simply that it is an integral piece, whereas the other is made in two pieces, as the examiner states, but that the striker has a flexible connection with the leg strap and projects laterally, whereas the Houghey pendant has a jointed connection and hangs horizontally. These structural differences produce very great differences of result. The loose-jointed connection of the Houghey pendant causes it to swing and dangle and strike more often the leg by which it is carried than the opposite leg, which it is intended to strike. Experience has demonstrated the fact that the pendant does not swing out from its vertical position into a horizontal plane, but tosses about and strikes both legs. The applicant's striker projects laterally from the leg strap, and during the motion of the horse it cannot possibly strike the leg by which it is carried, but must
2183[1] strike the opposite leg only, and by reason of its flexible connection with the leg strap, which is preferably accomplished by employing the continuous strap formed with the loop carrying the balls or other devices, the striker inflicts a slight blow upon the opposite leg without damage or serious pain to the horse and perfectly accomplishes its result. The idea of a laterally projecting striker flexibly connected to a leg strap is an entirely novel feature and something totally different from anything shown or possibly contemplated by the Houghey device, which is limited to a dependent pendant jointed to the leg strap and normally hanging in a horizontal plane. It is absolutely impossible for the Houghey pendant to normally project laterally.

The claims now presented will be found to clearly point out these differences, and it is hoped will be allowed. Applicant does not contemplate or desire to cover anything shown in the Houghey patent, which is a device that is decidedly unsatisfactory and fails to accomplish its intended result.

Erase claim 1 and insert:

Substitute 6, Jan. 9, '90.	"1. An interfering device for horses, consisting
Dec. 23, '89.	of a part to be attached to the leg of the horse,
" " "	portion
" " "	[and]* a laterally projecting [striker]* flex-
	ibly supported by said part attached to the leg
	device carried by said laterally projecting part to form a striker
2.	of the horse and a adapted to swing in a substantially horizontal plane."

This claim will be found unobjectionable, embodying the features of the lateral projection and the flexible support, which are both novel and wholly different from the Houghey device and, in fact, totally inconsistent with it.

*[Words in brackets erased in copy.]
[Paragraph enclosed between rules erased in copy.]

Erase claim 2 and insert:

3. Substitute 5, Dec. 31, '89.	"2. An interfering device for horses, consisting of a part to be attached to the leg of the horse and a striker formed integral with said part and adjustable as to its length."

$218\frac{18}{2}$ This feature of the adjustability of the length of the striker (which may be accomplished readily by lengthening or shortening the projecting loop of the strap) is an entirely novel feature.

In claim 3, before "striker," line 4, insert "laterally projecting."

I would call the examiner's attention to the fact that claim 5 includes, as an element not embodied in claim 4, the pads which are employed, in addition to the tubular piece for the strap, to prevent rubbing and chafing of the leg of the horse. This added element certainly lends a patentable difference to claim 5 over claim 4. I doubt not that this point was overlooked.

Very truly,

R. M. HUNTER, *Attorney.*

[Endorsed:] Serial No., 324,069; paper No. 4. Amendment-2-3. Filed Dec. 3d, 1889. C. L. Busch. U. S. Patent Office, Dec. 3, 1889. U. S. Patent Office, Dec. 3, 1889, division XI.

$218\frac{19}{2}$

Room 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *December 4th*, 1889.

Mailed December 12th, 1889.

Interfering devices for horses. Sept. 16th, 1889. = 324,069.

Charles L. Busch, care of R. M. Hunter, = 926 Walnut St., Philadelphia, Penn.:

Claim 1 is refused because of its very indefinite character and on Hall, of May 12th, 1868, = 77,728. Claim 2 is refused on the patent to Haughey, of record, and because of its very indefinite character.

Claims 4 and 5 are indefinite, inasmuch as the "striker" is not sufficiently described.

It is obvious that the strap alone would not operate as a laterally extended striker.

T. H. ANDERSONN,
Assist. Examiner.

JOHN D. HYER, *Examiner.*

[Endorsed:] Serial No., 324,069; paper No. 5. Rejection. Dated Dec. 4, 1889.

[Paragraph enclosed between rules erased in copy.]

$218\frac{120}{2}$ PHILADELPHIA, PA., *Dec. 21st*, 1889.

In the United States Patent Office.

Room 105.

In the Matter of the Application of CHARLES L. BUSCH for Imp'ts in Interfering Devices for Horses. Filed Sept. 16, 1889. Serial Number, 324,069.

Hon. Commissioner of Patents.

DEAR SIR: Amend the above application as follows:

In claim 1 erase "and," line 2; erase "striker," line 3, and insert in lieu thereof "portion;" after "and," line 4, insert "devices carried by said laterally projecting part to form a striker."

This amendment clearly distinguishes the claim from references which have been cited.

I must request a reconsideration of claim 2, for the reason that the construction therein set out is entirely novel and is absolutely inconsistent with what is shown in the Haughey pendant. The idea of making a striker adjustable as to its length is entirely novel, and the applicant is entitled to a broad claim thereon. The Haughey pendant, aside from the fact that it is formed separate from the leg strap and is loosely jointed thereto, is not adjustable as to its length. The applicant, in being the first to employ this construction, is entitled to a broad claim.

I do not understand the objection raised to claims 4 and 5 on the ground that the striker is not sufficiently described. It would appear from this and from the sentence which follows, "It is obvious that the strap alone would not operate as a laterally extending striker," that the examiner desired a limitation to be introduced into these claims for devices (such as the rubber or wooden balls) carried by the projecting portions. I cannot see the ne-

$218\frac{121}{2}$ cessity of introducing such a limitation in these claims. The combination of parts set forth is entirely new, whether or not the applicant employs auxiliary devices carried by the projecting portions to form the striker or whether he forms the striker alone, without employing such auxiliary devices. While it is conceded that the interfering device would not operate as well if these auxiliary devices were not employed, it does not necessarily follow that it would not be an operative construction if these auxiliary devices were dispensed with and the strap alone looped in the manner described. It would form a laterally projecting and flexible striker such as is described and would strike the opposite leg of the horse during motion. Of course this would depend largely upon the size and stiffness of the strap employed. For these reasons it is maintained that the applicant is entitled to a claim without including the auxiliary devices carried by the projecting portion.

[Paragraph enclosed between rules erased in copy.]

Insert the following claim:

Erased Jan. 9, '90. 4.	"7th. The interfering devices for horses consisting of a strap encircling the leg of a horse, having a portion of its length formed into a loop laterally projecting from said portion encircling the leg and adapted to strike the opposite leg of the horse during motion to prevent interference."

I think that the examiner will readily perceive the justice of the applicant's claim and allow to him the claims now presented. The improvement which has been made by the applicant from the prior existing art is very great and is highly appreciated by all horsemen. The great superiority of these devices lies in the fact that the part which strikes the horse projects laterally and is flexibly connected to the leg portion. This is the particular feature of excellence in the applicant's device, and he should be given protection
218½[22] upon that point without including the auxiliary devices, such as the wooden or rubber balls, which it is found preferable to place upon the projecting portion of the strap.

Very truly, R. M. HUNTER, *Attorney*

[Endorsed:] Serial No., 324,069; paper No. 6. Amendment 4. Filed Dec. 23, 1889. C. L. Busch. Cancelled. U. S. Patent Office, Dec. 23, 1889. U. S. Patent Office, Dec. 23, 1889, division XI.

218½[23] Room 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Dec. 26th*, 1889.

Interfering devices for horses. Sept. 16, 1889. # 324,069.

Charles L. Busch, care of R. M. Hunter, # 926 Walnut St, Philadelphia, Pa.:

This case has been further considered, and applicant is informed that claim 1 is not patentable in its present broad and indefinite character.

Patent to Hall, of record, shows that a laterally projecting striker is old, in view of which there would be no invention to substitute for the striker of Hall the pendant of Haughey. The claim is refused on these two patents.

Claim 2 calls for a horse boot having a striker formed integrally with the portion that encircles the horse's leg, the striker being adjustable as to its length. Now, there is no invention in forming a striker integral with the leg portion, and, even if there should be, Hall shows strikers so formed.

Haughey shows a pendant which can be lengthened or shortened

[Paragraph enclosed between rules erased in copy.]

as more or less balls are applied thereto. Claim 2 does not, therefor-, distinguish from the patents cited, and the same is again refused.

T. H. ANDERSON, *4th Assist.*

JOHN D. HYER, *Examiner.*

[Endorsed:] Serial No., 324,069; paper No. 7. Rejection. Dated Dec. 26, 1889.

$218\frac{1}{2}^{24}$ PHILADELPHIA, PA., *Dec.* 30, 1889.

In the United States Patent Office.

Room 105.

In the Matter of the Application of CHARLES L. BUSCH for Imp't in Interfering Devices for Horses. Filed September 16, 1889. Serial Number, 324,069.

Hon. Commissioner of Patents.

DEAR SIR: Amend the above application as follows: I would request a reconsideration of claim 1. This claim does not seem to be met by the two patents which have been cited, for the reason that it would be impossible to substitute for such a projection as is shown in the Hall patent the jointed pendant of the Haughey patent. Obviously, such a substitution would produce the Haughey device, and, in fact, the Haughey interfering device is nothing more than the Hall apparatus without its "ticklers," and substituted therefor a jointed pendant. Such devices as this shown in the Hall patent do not accomplish the curing of the evil of interfering. The Haughey device was meant to improve upon this, and it did it by connecting a pendant by a loose joint to the leg strap, the idea being that this pendant would swing out during motion and assume a horizontal plane and strike the opposite leg of the horse, if the horse traveled with its legs close. Experience has demonstrated, however, that the Haughey device is unsatisfactory for the reason that the pendant does not swing out in the manner that was intended and expected of it, but, on the contrary, dangles and swings about in all directions, and as often strikes the leg to which it is attached as the opposite leg. The great advantage of the applicant's apparatus is that its striking portion projects laterally and is flexibly connected,

$218\frac{1}{2}^{24a}$ not loosely jointed. A flexible connection with the lateral projection are the chief features of the applicant's invention, and are those which render it efficient. Now, considering the Hall and Haughey apparatus as illustrating the state of the art, it is very clear that it would require invention to produce such an apparatus as that set forth in the first claim of this application. If, as the examiner suggests, we replace in the Hall device the ticklers by the Haughey pendant, of necessity, we must have a jointed and depending pendant. In no way could we cause the Haughey pendant to laterally project, excepting by introducing the feature of the flexible connection, which would be an entire departure from the Haughey invention and would, of necessity, call into play the inventive facul-

ties. The function performed by the flexibly supported and laterally projecting striker is different from that which is performed by the loosely jointed pendant. It may be true that the function which it is intended the loosely jointed pendant should perform is the same as the function which is performed by the flexibly connected striker, but the fact is that the function is not the same, and it is the actual result, not the intention, which rules and defines an invention. It is therefore true that a substitution of the Haughey pendant for the tickler of the Hall device would not produce the applicant's apparatus, as set forth in claim 1, but, on the contrary, would be no different from the actual construction of the Haughey pendant and would be simply a return to Haughey device, and in order to change either of these devices so as to be similar to the applicant's device would require invention, for the idea of a laterally projecting striker (not tickler) is entirely novel and is a vast improvement in the art.

$218\frac{1}{2}^{25}$ Erase claim 2 and insert:

Erased Jan. 9, '90. 5.

"2. The interfering device for horses consisting of a part to be attached to the leg of the horse and a part carried thereby and adapted to strike the other leg of the horse, such striking part being adjustable as to its length."

This feature of adjustability of the part carried by the leg strap is entirely novel, for its adjustability does not depend upon the subtraction or addition of balls or other devices carried by the part, but in the lengthening or shortening of the striking part itself. In no sense is the Haughey pendant adjustable, for no matter how many balls we may remove from the Haughey pendant it is still of the same length. Let us suppose, for instance, that, instead of placing a number of balls upon his striker, he should place merely one ball at the end. Can it be said that the pendant is of a different length? The length of the pendant in the Haughey device is fixed and cannot be changed, and that length is in no way dependent upon the number of balls which are strung upon it. It is not the balls which constitute the pendant, and, in fact, in the Haughey patent is illustrated a pendant having no balls at all. The examiner will readily see, therefore, that whether one or five balls are employed in the Haughey device the pendant is still of the same length and is therefore not adjustable, for he has no means of shortening or lengthening the part which carries those balls.

Furthermore, while Haughey can remove some of the balls, though without shortening the length of his pendant, it is absolutely impossible for him to add a single ball or a single hair breadth of length beyond the normal number.

[Paragraph enclosed between rules erased in copy.]

$218\frac{1}{2}^{26}$ For these reasons it will appear that the applicant is the first to have conceived of making a striking portion adjustable as to its length, and that this adjustability is wholly independent of the number of balls which may be strung upon it. It is thought that the applicant is entitled to all of the claims which are now presented. His invention is considered a valuable one, and it is hoped that his application may now be passed to issue.

The devices have been put upon the market by a large and well-known business house, and they desire to feel that they are fully protected in their improvements.

Very truly, R. M. HUNTER.

[Endorsed:] Serial No., 324,069; paper No. 8. Arg'm't & am'd't 5. Filed Dec. 31, 1889. C. L. Busch. Canceled. U. S. Patent Office, Dec. 31, 1889. U. S. Patent Office, Dec. 31, 1889, division XI.

$218\frac{1}{2}^{27}$ Room 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Jan. 3rd*, 1890.

Mailed Jan. 4th, 1890.

Interfering devices for horses. Sept. 16, 1889. #324,069.

Charles L. Busch, care R. M. Hunter, #926 Walnut street, Philadelphia, Penn.:

Patent to Dickinson of Oct. 14th, 1879, #220,585, horse boots, is added to former references, and claim 1 is again refused.

See also patent to Debatin of Dec. 3rd, 1889, #416,579, same class as above.

Claim 2 is refused on Haughey of record. There is no doubt at all, in the examiners' opinion, but that Haughey's patent anticipates this claim. The pendant shown in Fig. 1 of the patent is undoubtably capable of being adjusted in length.

Upon reconsideration of claim 7 in connection with patent to Dickinson said claim is found to be substantially met by the patent referred to and is refused. Obviously there would be no invention in making the loop an integral part of the strap which encircles the leg of the horse.

T. H. ANDERSON,
Assist. Examiner.

JOHN D. HYER, *Ex.*

[Endorsed:] Serial No., 324,069; paper No. 9. Rejection. Dated Jan. 3, 1890.

$218\frac{1}{2}^{28}$ PHILADELPHIA, PA., *Jan.* 8, 1890.

In the United States Patent Office.

Room 105.

In the Matter of the Application of CHARLES L. BUSCH for Imp't in Interfering Devices for Horses. Filed Sept. 16, 1889. Serial Number, 324,069.

Hon. Commissioner of Patents.

DEAR SIR: Amend the above application as follows:

Erase claims 1 and 2 and insert:

Substitute 9, Jan. 30, '90. 6.	"1st. An interfering device for horses, consisting of a continuous strap encircling the leg and having a portion of its length bent over upon itself to form a laterally projecting loop or striker, whereby the length of said looped portion may be adjusted through the free end of the strap."

The examiner will perceive *that* the fact that the loop or striker formed integral with the leg-encircling strap embodies a very important feature—*i. e.*, that of the adjustment of the striker or loop portion. Obviously, when the strap is continuous with the loop the latter may be lengthened or shortened by taking up or letting out the leg-encircling strap.

This is an entirely novel feature, and unquestionably constitutes invention. The applicant is clearly entitled to a claim for this construction.

Erase claim 7.

The application is now in condition for allowance.

Very truly, R. M. HUNTER, *Attorney.*

[Endorsed:] Serial No., 324,069; paper No. 10. Amendment 6. Filed Jan. 9, 1890. C. L. Busch. Cancelled. U. S. Patent Office, Jan. 9, 1890. U. S. Patent Office, Jan. 9, 1890, division XL.

$218\frac{1}{2}^{29}$ Room 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Jan.* 10, 1890.

Mailed Jan. 11, 1890.

Interfering devices for horses. Sept. 16, 1889. ≠ 324,069.

Charles L. Busch, care of R. M. Hunter, ≠ 926 Walnut St., Philadelphia, Pa.:

The structure covered by claim 1, presented by amendment filed the 9th inst., is for an incomplete and inoperative —, inasmuch as

[Paragraph enclosed between rules erased in copy.]

the tube and the button at the end of the strap and the devices intermediate thereof are necessary to hold the strap in looped position.

The claim is refused.

T. H. ANDERSON, *Assist. Ex.*

JOHN D. HYER, *Examiner.*

[Endorsed:] Serial No., 324,069; paper No. 11. Rejection. Dated Jan. 10, 1890.

$218\frac{130}{2}$ PHILADELPHIA, PA., *Jan.* 13, 1890.

In the United States Patent Office.

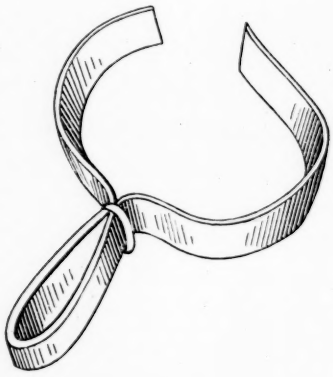
Room 105.

In the Matter of the Application of CHARLES L. BUSCH for Imp't in Interfering Devices for Horses. Filed Sept. 16, 1889. Serial Number, 324,069.

Hon. Commissioner of Patents.

DEAR SIR: Amend the above application as follows:

A reconsideration of claim 1 is requested for the reason that it is not inoperative, and that the tube and button at the end of the strap are not absolutely necessary devices in order to form a complete construction. The examiner will readily perceive that the loop might be formed without employing these devices, as illustrated in the following sketch:



There would seem to be no reason why the applicant should include any unnecessary elements and thereby limit his claim.

I think upon reconsideration the examiner will see that this claim is allowable and will allow the application as it now stands.

It is true that it would be necessary to employ some device for the purpose of sustaining the loop, but this might be accom-
$218\frac{131}{2}$ plished by a variety of other devices than the tube illustrated in the drawings—as is shown, for instance, in the sketch—and there would seem to be no reason why the applicant should

limit himself to any particular device for accomplishing this result. He is unquestionably the first inventor of an adjustable striker carried by the leg-encircling strap as set forth in the claim, and there would seem to be no reason why he should not be granted the claim for what he has invented.

Very truly, R. M. HUNTER, *Attorney.*

[Endorsed:] Serial No., 324,069; paper No. 12. Argument. Filed Jan. 14, 1890. C. L. Busch. U. S. Patent Office, Jan 14, 1890. U. S. Patent Office, Jan. 14, 1890, division XI.

$218\frac{32}{2}$ Room 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Jan. 18th*, 1890.

Mailed Jan. 20th, 1890.

Interfering devices for horses. Sept. 16th, 1889. # 324,069.

Charles L. Busch, care of R. M. Hunter, # 926 Walnut St., Philadelphia, Penn.:

In view of patents to Dickinson and Haughey, of record, which show that it is old to form a striker by doubling a strap upon itself, and that such strikers have been made adjustable, the first claim herein is of an indefinite character, and is substantially anticipated and rejected.

T. H. ANDERSON,
Assist. Examiner.

JOHN D. HYER, *Examiner.*

[Endorsed:] Serial No., 324,069; paper No. 13. Rejection. Dated Jan. 18, 1890.

$218\frac{33}{2}$ PHILADELPHIA, PA., *16th January*, 1890.

In the United States Patent Office.

Room 105.

In the Matter of the Application of CHAS. L. BUSCH for Imp't in Interfering Devices for Horses. Filed 16th September, 1889. Serial Number, 324,069.

Hon. Commissioner of Patents.

DEAR SIR: Amend the above application as follows:

The examiner will please suspend action upon this case pending a further amendment upon the part of the applicant.

Very truly, R. M. HUNTER, *Attorney.*

[Endorsed:] Serial No., 324,069; paper No. 14. Letter to office. Filed Jan. 17, 1890. C. L. Busch. U. S. Patent Office, Jan. 17, 1890, Jan. 18, 1890, division XI.

$218\frac{134}{2}$ PHILADELPHIA, PA., *Jan.* 29, 1890.

In the United States Patent Office.

Room 105.

In the Matter of the Application of CHARLES L. BUSCH for Imp't in Interfering Devices for Horses. Filed Sept. 16, 1889. Serial Number, 324,069.

Hon. Commissioner of Patents.

DEAR SIR: Amend the above application as follows:

After "is desired," next to the last line of page 2, erase and insert:

7. "And also to strike the leg to which it is attached as well as the opposite leg, thereby confusing the horse."

After "plane," line 3, page 3, insert "and cannot strike the leg to which it is attached."

After line 19, page 4, insert:

8. "And may be kept always projecting so as not to depend and strike the leg which carries it."

Erase claim 1 and insert:

"1st. In an interfering device for horses, the combination of a leg strap for attachment to the leg of the horse, a guide piece, supported by said leg strap, Insert 10, Feb. 10, '90. through which a portion of the leg strap extends with freedom of motion,[10] forming and A a laterally projecting Feb. 10, '90. striker [carried by said leg strap],* same Feb. 10, '90. whereby the A [laterally projecting striker] may be tightened to take up any slack therein by tightening the leg strap passing through the guide piece."

The examiner will readily see that the applicant is entitled to this claim, and the application is now in an allowable condition. It is urgently requested that the allowance of this case be made as quickly as possible.

Very truly, R. M. HUNTER, *Attorney.*

[Endorsed:] Serial No., 324,069; paper No. 15. Amendment-7-9. Filed Jan. 30, 1890. C. L. Busch. U. S. Patent Office, Jan. 30, 1890. U. S. Patent Office, Jan. 30, 1890, division XL.

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*[Words enclosed in brackets erased in copy.]

$218\frac{135}{2}$

Room 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Feb.* 1, 1890.

Mailed Feb. 3, 1890.

Interfering devices for horses. Sept. 16, 1889. ≠324,069.

Charles L. Busch, care of R. M. Hunter, ≠926 Walnut St., Philadelphia, Pa.:

This case has been partly finally refused, and, in the absence of a good and sufficient reason why the proposed amendment, filed the 30th ult., was not earlier presented (as proscribed in rule 68), the same has not been incorporated in the case.

T. H. ANDERSON,
Assistant Examiner.

JOHN D. HYER, *Examiner.*

[Endorsed:] Serial No., 324,069; paper No. 16. Letter dated Feb. 1, 1890.

$218\frac{136}{2}$

PHILADELPHIA, PA., *Feb'y* 4, 1890.

In the United States Patent Office.

Room 105.

In the Matter of the Application of CHARLES L. BUSCH for Imp't in Interfering Devices for Horses. Filed Sept. 16, 1889. Serial Number, 324,069.

Hon. Commissioner of Patents.

DEAR SIR: Amend the above application as follows:

It was not understood that the former claim one, which was erased by the last amendment, stood under a final rejection. If the examiner will observe, when this claim was first presented and in the office letter of Jan'y 10th it was objected that the claim was for an incomplete and inoperative structure. The objection raised to the claim was not upon the question of its novelty in view of any of the references cited. Thereupon a paper was presented in which it was sought to point out that the claim was not inoperative or incomplete, and a reconsideration was asked. Before, however, any further action was received from the office a letter was sent requesting the examiner to suspend further action, pending an additional amendment to be made by the applicant. This suspension of action was requested for the reason that the applicant is particularly desirous of obtaining an allowance of such claims as he is entitled to as quickly as possible. This letter requesting suspension was written on the 16th of Jan'y. On the 18th of Jan'y, however, there was received a communication from the office rejecting the first claim presented for lack of novelty over the patents of Dickinson and Haughey. This was the first rejection which the claim had

received upon any reference, the objection raised by the
218½[137] office letter of Jan'y 10th being to the inoperativeness and incompleteness of the construction. This objection was withdrawn, as it is understood, by the examiner and a rejection made on the ground of lack of novelty. This action of the examiner rejecting this claim was taken although the applicant had requested a suspension of action. (However, I suppose this was, of course, done by the examiner before he had received the applicant's request.) In any event, it was understood to be but a first rejection of the claim upon references and upon the ground of lack of novelty and was not understood to be a final rejection. Thereupon the applicant immediately amended his application by the insertion of a claim, which, it seems to me, was a proper compliance with the rules. In any event, however, it would seem that the request for a suspension of action should certainly have the effect of removing any bar to amendment that might be raised by a final rejection subsequently given. In the present case, however, the rejection of Jan'y 18th could not be called, as it seems to me, a final rejection. I think the examiner will see that the applicant is justly entitled to all of the claims presented, including the last one offered, and there are very cogent reasons why we desire to obtain the issue of this patent as quickly as possible. The interests of the applicant will be seriously injured if the issue of the patent is delayed.

Very truly, R. M. HUNTER, *Attorney.*

[Endorsed:] Serial No., 324,069; paper No. 17. Argument. Filed Feb. 5, 1890. C. L. Busch. B. U. S. Patent Office, Feb. 5, 1890. U. S. Patent Office, Feb. 5, 1890, div. XI.

218½[138] Room 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Feb.* 6, 1890.

Mailed Feb. 7, 1890.

Interfering devices for horses. Sept. 16th, 1889. # 324,069.

Charles L. Busch, care of R. M. Hunter, #926 Walnut St., Philadelphia, Pa.:

It has been decided to admit the amendment of the 30th ult. in this case on the showing made by the attorney. The claim presented, however, is not in anywise descriptive of the device shown. However, the same may be amended as follows: After "motion," line 4, insert "said leg strap looped and passed through an opening in the guide-piece," and after "and," same line, insert "forming;" line 5, erase "carried by said leg strap," and lines 5 and 6, "laterally projecting striker;" substitute for the latter words "same."

T. H. ANDERSON,
Assistant Examiner.

JOHN D. HYER, *Examiner.*

[Endorsed:] Serial No., 324,069; paper No. 18. Rejection. Dated Feb. 6, 1890.

$218\frac{139}{2}$ PHILADELPHIA, PA., *Feb.* 8, 1890.

In the United States Patent Office.

Room 105.

In the Matter of the Application of CHARLES L. BUSCH for Imp't in Interfering Devices for Horses. Filed Sept. 16, 1889. Serial Number, 324,069.

Hon. Commissioner of Patents.

DEAR SIR: Amend the above application as follows:

In claim 1, line 4, after "motion," insert:

10. "Said leg strap being passed through an opening in the guide piece."

Also, same line, after "and," insert "forming."

Line 5, erase "carried by said leg strap," and also, lines 5 and 6, erase "laterally projecting striker" and insert "same."

It is hoped the allowance may be given at once, as this invention is being manufactured and placed upon the market, and *and* it is desirable to mark them with the patent number as soon as possible.

Very truly, R. M. HUNTER, *Attorney.*

[Endorsed:] Serial No., 324,069; paper No. 19. Amendment. Filed Feb. 10, 1890. C. L. Busch. U. S. Patent Office, Feb. 10, 1890. U. S. Patent Office, Feb. 10, 1890, division XL.

$218\frac{140}{2}$ Room 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Feb. 11th*, 1890.

Mailed Feb. 12th, 1890.

Interfering devices for horses. Sept. 16, 1889. # 324,069.

Charles L. Busch, care of R. M. Hunter, #926 Walnut St., Philadelphia, Penn.:

The statement contained in the last clause of the specification is too broad in scope, and the same should be modified.

Applicant may properly state that he holds himself entitled to any changes or modifications which rightfully come within the scope of his invention.

T. H. ANDERSON, *Assist. Ex.*

JOHN D. HYER, *Examiner.*

[Endorsed:] Serial No., 324,069; paper No. 20. Letter dated Feb. 11, 1890.

$218\frac{141}{2}$ PHILADELPHIA, PA., *Feb.* 13, 1890.

In the United States Patent Office.

Room 105.

In the Matter of the Application of CHARLES BUSCH for Imp't in Interfering Devices for Horses. Filed Sept. 16, 1889. Serial Number, 324,069.

Hon. Commissioner of Patents.

DEAR SIR: Amend the above application as follows:
Erase the last paragraph of page 5 and insert in lieu thereof:

Substitute 11, Feb. 19, '90. 10.	"It is apparent that I do not limit myself to any more details of construction which may be varied without departing from the principles of my invention."

This paragraph is without objection, and is in substantially the form suggested by the examiner.

The application now being in an allowable condition, I would urge upon the examiner to let me have the allowance of the case in order that the final fee may be paid before the close of next Thursday's issue.

Very truly, R. M. HUNTER, *Attorney.*

[Endorsed:] Serial No., 324,069; paper No. 21. Amendment 10, Filed Feb. 14, 1890. C. L. Busch. Cancelled. U. S. Patent Office. Feb. 14, 1890. U. S. Patent Office, Feb. 14, 1890, division XI.

$218\frac{142}{2}$ Room 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Feb. 15th*, 1890.

Mailed Feb. 17th, 1890.

Interfering devices for horses. Sept. 16, 1889. # 324,069.

Charles L. Busch, care of R. M. Hunter, # 926 Walnut St., Philadelphia, Pa.:

This case has been considered and adjudicated upon what applicant has shown and described as his invention. Nothing that the applicant has contemplated that is not disclosed herein has been or can be considered by the examiner.

It is not apparent to the examiner that the device shown and described by applicant as his invention could be varied without departing from the spirit of his invention.

If the device is capable of being modified without departing from the principle of the invention, applicant is undoubtedly entitled to

[Paragraph enclosed between rules erased in copy.]

such modification, and it would be immaterial whether such a statement were in the specification or not, but, if it is desired to incorporate a clause to that effect in the specification, it should conform to the suggestion made by the examiner in official letter of the 11th inst., viz., that applicant holds himself entitled to any variation or change in details which fall- within the scope of his invention.

The clause presented by amendment of the 13th inst. is open to the same objection as its predecessor.

T. H. ANDERSON,
Assist. Examiner.

JOHN D. HYER, *Examiner.*

[Endorsed:] Serial No., 324,069; paper No. 22. Letter. Dated Feb. 15th, 1890.

$218\frac{143}{2}$ PHILADELPHIA, PA., *Feb'y* 18, 1890.

In the United States Patent Office.

Room 105.

In the Matter of the Application of CHARLES L. BUSCH for Imp't in Interfering Devices for Horses. Filed Sept. 16, 1889. Serial Number, 324,069.

Hon. Commissioner of Patents.

DEAR SIR: Amend the above application as follows:

Erase the paragraph inserted on page 5 by amendment dated the 13th inst. and insert:

11. "I hold myself entitled to any variation or change in details which falls within the scope of my invention."

This paragraph is worded in the manner suggested by the examiner, and I would ask that the application may be allowed so as to be included in the issue of Thursday, the 20th inst., and, in order to insure this, I would urgently request the examiner, as a favor, to have the allowance mailed on Wednesday night, that it may be received on Thursday morning and the fee paid here to the United States Assist. Treasurer upon that day. This can easily be accomplished if this amendment can receive consideration upon Wednesday, the 19th inst.

Very truly, R. M. HUNTER, *Attorney.*

[Endorsed:] Serial No., 324,069; paper No. 23. Amendment 11. Filed Feb. 19, 1890. C. L. Busch. U. S. Patent Office, Feb. 19, 1890. U. S. Patent Office, Feb. 19, 1890, division XI.

$218\frac{143a}{2}$ (2–024.)

Issue division. Serial No., 324,069.

All communications should be addressed to "the Commissioner of Patents, Washington, D. C."

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
WASHINGTON, D. C., *Feb.* 24, 1890.

Charles L. Busch, c. o. R. M. Hunter, 926 Walnut St., Phila., Pa.

SIR: Your application for a patent for an improvement in horse boots, filed Sept. 16, 1889, has been examined and allowed.

The final fee, twenty dollars, must be paid, and the letters patent bear date as of a day not later than six months from the time of this present notice of allowance.

If the final fee is not paid within that period the patent will be withheld, and your only relief will be by a renewal of the application, with additional fees, under the provisions of section 4897, Revised Statutes. The office aims to deliver patents upon the day of their date, and on which their term begins to run; but to do this properly applicants will be expected to pay their final fees at least twenty days prior to the conclusion of the six months allowed them by law. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will consume the intervening time, and such work will not be done until after payment of the necessary fees.

When you send the final fee you will also send, distinctly and plainly written, the name of the inventor and title of invention as above given, date of allowance (which is the date of this circular), date of filing, and, if assigned, the names of the assignees.

If you desire to have the patent issue to assignees, an assignment containing a request to that effect, together with a fee for recording the same, must be filed in this office on or before the date of payment of final fee.

Additional copies of specifications and drawings will be charged for at the following rates: Single copies, uncertified, 25 cents; twenty copies or more, 10 cents each. The money should accompany the order.

Very respectfully, C. E. MITCHELL,
Commissioner of Patents.

[Printed across the face in red ink:] In remitting the final fee give the serial number at the head of this notice.

[On margin in red ink:] The within title is that given by the examiner in charge as most appropriate to your invention. Should you desire a change in the same, satisfactory reasons must be given therefor on or before the payment of the final fee.

$218\frac{144}{2}$ PHILADELPHIA, PA., *Feb'y* 24, 1890.

Hon. Commissioner of Patents.

DEAR SIR: Herewith annexed I forward you my check for twenty dollars, the amount of the final fee in the application specified below:

Inventor, Charles L. Busch.
Patent to be issued to Walter Lee.
Invention, interfering devices for horses.
Date of filing, Sept. 16, 1889.
Date of allowance, Feb'y 24, 1890.
Serial No., 324,069.
Send the patent to me in Philadelphia.

Very truly, R. M. HUNTER, *Attorney.*

[Endorsed:] U. S. Patent Office, Feb. 25, 1890. Chief clerk. U. S. Patent Office, Feb. 25, 1890. Chief clerk.

$218\frac{145}{2}$ (Serial number, 324,069.)

1889. Ex'r's Book $\frac{152}{127}$.

Assigned. Hyer.

Patent No. 423,854.

Charles L. Busch, ass'or to Walter Lee, of same place,
Of Philadelphia,
County of ——,
State of Pennsylvania.
Invention, interfering devices for horses.

Parts of application filed.
- Petition, Sept. 16, 1889.
- Affidavit, " " "
- Specification, " " "
- Drawing, " " "
- Model not required.
- Specimen, ——.
- First fee, cash, $15, Sept. 16, 1889.
- " " cert., ——.

2. App. filed complete Sept. 16, '89.
3. Examined Feb. 20, 1890. John D. Hyer, ex'r.
Countersigned Feb. 24, '90. J. W. Babson, for Commissioner.
Notice of allowance, Feb. 24, 1890.
Final fee, cash, $20, Feb. 25, 1890.
" " cert., ——, 188–.
Patented Mar. 18, 1890.
Att'y or P. O. address, R. M. Hunter, 926 Walnut St., Phila., Pa.

$218\frac{146}{2}$ 1889.

Contents.

A.

O K. 54, harness, horse boots.

$\frac{1}{2}$. Application, 1 papers.
1. Rej. Oct. 30th, '89.
2. Amend't 1, Nov. 20, '89.
3. Rej. Nov. 21, 1889.
4. Amend't- 2, 3, Dec. 3, '89.
5. Rej. Dec. 4, 1889.
6. Amend't 4, Dec. 23, '89.
7. Rej. Dec. 26, '89.
8. Arg'm't & am'd't 5, Dec. 31, '89.
9. Rej. Jan. 3, 1890.
10. Amend't 6, Jan. 9, '90.
11. Rejection, Jan. 10, '90.
12. Argument, Jan. 14, '90.
13. 2nd rej., Jan. 18, '90.
14. Letter to office, Jan. 17, '90.
15. Amend't- 7–9, Jan. 30, '90.
16. Letter, Feb. 1, 1890.
17. Argument, Feb. 5, '90.
18. Rej. Feb. 6, 1890.
19. Amend't, Feb. 10, '90.
20. Letter, Feb. 11, 1890.
21. Amend't 10, Feb. 14, '90.
22. Letter, Feb. 15, '90.
23. Am'd't 11, Feb. 19, '90.
Title: Improvement in horse boots.
J. F. F.; M. H.

[Endorsed:] 20501. D., '90.

218$\frac{148}{2}$

UNITED STATES PATENT OFFICE.

CHARLES L. BUSCH, of Philadelphia, Pennsylvania, assignor to Walter Lee, of same place.

Horse-boot.

Specification forming part of Letters Patent No. 423,854, dated March 18, 1890; application filed September 16, 1889. Serial No. 324,069. (No model.)

To all whom it may concern:

Be it known that I, Charles L. Busch, of the city and county of Philadelphia, and State of Pennsylvania, have invented an improvement in interfering devices for horses, of which the following is a specification:

My invention relates to interfering devices or trotting-balls for horses; and it consists of certain improvements which are fully set forth in the following specification, and shown in the accompanying drawings, which form a part thereof.

The object of my invention is to produce a convenient and efficient apparatus for the purpose of preventing the kicking or striking of a horse by itself during motion. Many trotting horses carry their feet closely together and during rapid motion are liable to strike one leg with the hoof of the other, often causing a serious injury. To prevent this, trotting balls or interfering apparatus have been devised, which are attached upon one leg of the horse and are adapted to strike the other leg if the two legs are brought too close together. In this manner the horse to avoid having his leg constantly struck by the interfering device is compelled to carry his feet farther apart.

It has been sought to construct an interfering device consisting of a swinging part, which while the horse is motionless shall normally assume a perpendicular or approximately perpendicular position, but during the rapid motion of the horse shall be caused to swing out for the purpose of striking the leg. To this end a pendant of rubber or wooden balls has been employed loosely jointed in a perpendicular position to a strap secured to the leg of the horse. This loose joint, however, does not in practice accomplish the desired object effectively, as the tendency of the pendant secured in this manner is to swing in a perpendicular plane, and not out or away from the leg into an approximately horizontal plane, as is desired, and also to strike the leg to which it is attached, as well as the opposite leg, thereby confusing the horse.

It is the object of my invention to overcome this fault by employing a striker or projecting portion so supported that during the motion of the horse it will of necessity swing in a substantially horizontal plane and cannot strike the leg to which it is attached. This object I accomplish by the improvements hereinafter more fully disclosed and described.

My invention furthermore consists of certain improvements in the construction and arrangement of the parts whereby greater efficiency of operation and economy of manufacture are obtained.

(Here follows diagram marked page 218½[147].)

In the drawings, figure 1 is a perspective view of my improved interfering device. Fig. 2 is a sectional plan view of the same, and Fig. 3 is an illustrative view showing the arrangement and operation of the same when attached to the horse.

A is a strap or band formed with a loop B at about its middle.

C is a covering of flexible material—such as rubber tubing—inclosing the strap or band A and having an opening through which the loop B extends.

D are a series of balls of rubber or wood loosely strung upon the loop B to form the striker, and supported thereon by a pin or bit of leather or other material E, through which the loop B of the strap is passed. While I prefer to form the striker in this manner by means of the wooden or rubber balls D, it is apparent that it may be formed in any other convenient manner and of any suitable material, as my invention is not in any way limited to the particular construction of the striker itself.

F is a pad or cushion secured to the flexible covering C and adapted to rest against the leg of the horse. I prefer to construct this pad F with a shield G, having an opening *g* at its center, and to arrange the flexible covering C and strap A between the pad and the shield, with the loop forming the striker extending through the hole *g*, in the manner shown in the drawings. This gives greater firmness and affords a better support for the striker. The pad is secured to the covering C by stitches *c*, the strap A being free.

It is apparent that in place of making the flexible cover-
218½[149] ing in one piece extending through the pad, as shown, it may be made in two sections, each having its end secured to the pad by the stitches *c c*.

H is a cushion or pad of soft material secured to the end of the covering C to protect the leg of the horse from contact with the buckle I upon the end of the strap A, by which the device is attached to the animal. The end of the strap A carrying the buckle I is secured to the flexible covering C by stitches *i*, and the strap from this point throughout its entire length is free. The advantages of this construction are manifold. The striker being formed on a part of the continuous strap A may be tightened or loosened and lengthened or shortened at will, and may be kept always projecting, so as not to depend and strike the leg which carries it. The tendency of the striker during the motion of the horse is to swing out into a horizontal plane, because at the opening *g* the least resistance is presented against this motion, or on the two sides where the force acts directly through the length of the strap A. By employing the outer covering C the strap A at no point comes into direct contact with the leg of the horse, so that the swinging of the striker does not produce a rubbing or chafing of the leg by reason

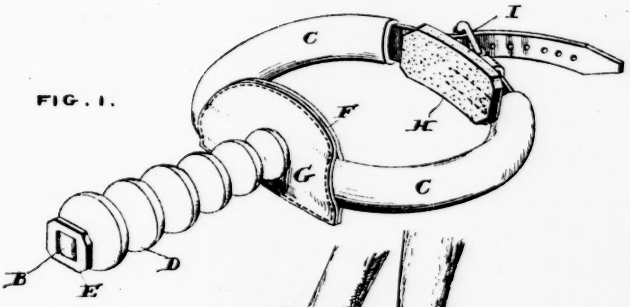
(No Model.)

C. L. BUSCH.

HORSE BOOT.

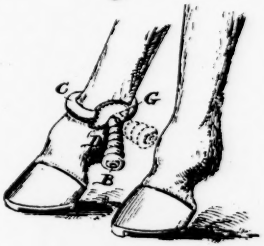
No. 423,854. Patented Mar. 18, 1890.

FIG. 1.



No. 189.
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v.
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FIG. 3.



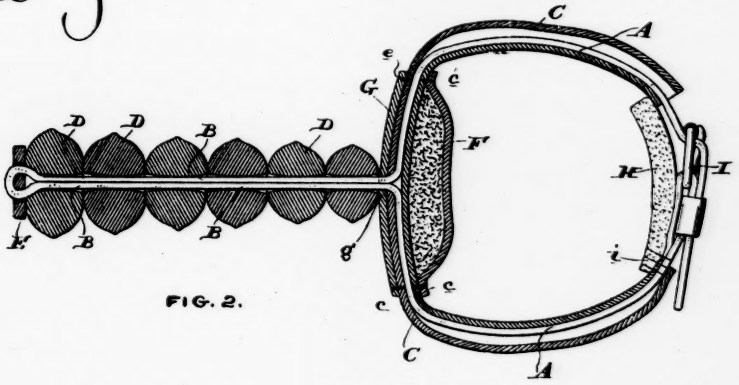


FIG. 2.

WITNESSES:
David S. Williamson
Henry Dumas

INVENTOR:
Charles L. Busch
by his Attorney



of any motion that may be imparted to that portion of the strap encircling it, and the device may be tightly secured without inconvenience to the animal.

The apparatus is constructed without the use of metal, except for the buckle, and of fewer parts than are ordinarily employed, whereby it may be more economically manufactured and will possess greater durability.

I hold myself entitled to any variation or change in details which falls within the scope of my invention.

Having now described my invention, what I claim as new, and desire to secure by letters patent, is—

1. In an interfering device for horses, the combination of a leg-strap for attachment to the leg of the horse, and a guide piece supported by said leg-strap, through which a portion of the leg-strap extends with freedom of motion, said leg-strap being passed through an opening in the guide piece and forming a laterally-projecting striker, whereby the same may be tightened to take up any slack therein by tightening the leg-strap passing through the guide piece.

2. An interfering device for horses, consisting of a strap encircling the leg of the horse and having a portion of its length formed into a loop, and devices carried by said looped portion to form a laterally-projecting striker adapted to swing out and strike the other leg of the horse to prevent interfering.

3. In an interfering device, the combination of a tubular piece adapted to encircle the leg of a horse, a strap extending throughout said tubular piece and having a swinging portion projecting through a hole in the side of said tubular piece, adapted to form a swinging striker to strike the other leg of the horse and prevent interfering, whereby said strap does not come directly in contact with the legs of the horse.

4. In an interfering device, the combination of a tubular piece adapted to encircle the leg of a horse, a strap extending throughout said tubular piece and having a swinging portion projecting through a hole in the side of said tubular piece, adapted to form a swinging striker to strike the other leg of the horse and prevent interfering, whereby said strap does not come directly in contact with the legs of the horse and pads carried by said tubular piece.

5. In an interfering device, the combination of a tubular piece adapted to encircle the leg of a horse, a strap extending throughout said tubular piece, attached to it at one end only, and having a swinging portion formed by a loop in the length of said strap projecting through a hole in the side of said tubular piece, adapted to form a swinging striker to strike the other leg of the horse and prevent interfering, whereby said strap does not come directly in contact with the legs of the horse.

In testimony of which invention I have hereunto set my hand.

CHARLES L. BUSCH.

Witnesses:

ERNEST HOWARD HUNTER.

S. T. YERKES.

219 In the Circuit Court of the United States, Eastern District of Pennsylvania.

HAUGHEY *vs.* LEE *et al.* } In Equity. October Session, 1889. No. 10.

Depositions taken pursuant to notice at Norristown on Monday, March 17th, 1890, at 11 o'clock a. m., before A. H. Hendricks, a notary public and stipulated examiner, in behalf of respondents.

Present: E. J. O'Brien, Esq., for plaintiff; Mr. Hunter, for defendants.

SOLOMON GILBERT sworn.

By Mr. HUNTER:

Q. 1. What is your age, residence and occupation?

A. Swede street, Norristown; keeper of boarding stable; 69 years of age.

Q. 2. How long have you been in the boarding-stable business?

A. About six years.

Q. 3. Previous to that time, what was your occupation?

A. I was in the marble business.

220 Q. 4. Have you owned horses?

A. Yes, sir; all kinds pretty much; work horses and driving horses.

Q. 5. Are you acquainted with the device known as a kicking chain?

A. Yes.

Q. 6. Have you ever used such a device?

A. Yes.

Q. 7. Have you such a device in your possession now, and, if so, will you please produce it?

A. Yes, sir; I have used the chain, and I have also used the chain with the block. This is the idea that I used for a kicker. (Witness produces device which counsel for the defendants says he will duplicate and have on hand at the hearing, the same to be marked Respondents' Exhibit "Gilbert Device.") The block is my own idea of the thing. I want to explain how I came to put this thing on. I had a horse, and he was a terrible kicker at the stable. It kicked down a post, and I found it did not kick it all to pieces; and somebody told me to put a strap on and a chain longer than that, and I did, but it did not seem to have any effect; it would still kick with that, and the idea struck me, that if I had something heavier on the end, and he was quiet, he would bear it all without going any further, and I got this block put on, and that settled him. He did not kick hard, but he kicks a little bit with that, and did not hurt anything. He never had it on in the daytime. We only used it after the light was out, but this is the only thing, and I have recommended it to some other people. There was a man down at the Montgomery stable, and he came up and looked at this idea and got it and said it would fix his one. Now, that is the only thing I

know. Whether it would operate on all horses, I don't know, but I have got one horse there that I cannot keep quiet in the stable with safety without this here.

Q. 8. Is this device attached to the horse's leg by the strap?

A. Yes; by a plain strap. This is fastened in the fetlock below the joint; goes right above the hoof, the way I buckle it.

Q. 9. Have you always buckled it below the fetlock joint?

A. I have tried it above, but I did not think it acted quite so good.

Q. 10. How long have you used this?

221 A. I suppose two or three years. I wore out several of them until I got this one.

Q. 11. How long have you used devices similar to this, either with or without the block?

A. I suppose I have used it for four years, and I tried to use it a year before I put the block on.

Q. 12. Have these devices employing a strap encircling the leg of the horse and a chain forming a pendant therewith, either with or without the block, such as exhibited in the device you have produced, been in common use among horsemen for the purpose of preventing kicking?

(Objected to as incompetent, and because no foundation has been laid for the question.)

A. I cannot say I ever saw it on a horse before. I have only heard tell of it. I have heard tell of it, and I tried it. I was advised by a horseman to try this chain.

SOLOMON GILBERT.

Cross-examination waived.

JOHN PERRY sworn.

By Mr. HUNTER:

Q. 1. What is your name, age, residence and occupation?

A. Perry. I will be 68 on the 15th of August next; 1033 De Kalb street, Norristown; livery; been in that since 1850.

Q. 2. Do you remember a man by the name of Alonzo Wiley, who used to live at or near Norristown?

A. He is dead now; I remember him.

Q. 3. Did Wiley ever show you a device employed by him to cure interfering in horses?

A. He never showed me anything to cure interfering horses.

222 Q. 4. To prevent interfering?

A. Yes; he had a closet with all kinds of boots, all sizes, all classes; knee boots, shin boots and heel boots.

Q. 5. Did he ever show you a device employing a leg strap and a chain dependent from it?

A. Nothing like any of these that you showed me.

Q. 6. You have not seen any of these; you see, there are none here to refer to.

A. I saw a boot in there that he had. It was something like a

dog chain that links in one another, some two or three links with a little ball on the end of it. Might be as big as about the size of a small grape; but the heel boot was a regular heel boot made with this to come down from it. I never saw any but the one. I never seen it used. I condemned it when I seen it. I says, "I wouldn't wear it on a horse."

Q. 7. How did the three links of the dog chain with the ball on the end hang?

A. Why, it hung down.

Q. 8. And was loose?

A. Yes, it was loose. It was right here to the pad. Here was the strap at the right hand, and right around that come right on the heel, and in the centre of this there was an iron or riveted in some way, sewed in the inside, and that hung down—well, it might hang down that far about (indicating about half the length of his finger).

Q. 9. How long was it?

A. I could not tell how long it was because I took no particular notice. I looked at the different heel boots.

Q. 10. Did Wiley tell you what he used this device for?

A. He had it for the use of a horse, I suppose.

(Objected to as incompetent, the witness never having seen it used.)

Q. 11. What was it for?

223 A. I suppose it was for to use on a horse that would interfere. I never seen it, and he did not tell me that he had used it or anything of the kind. I was looking at all in there.

Q. 12. About how long ago was it that you saw this device?

A. I cannot tell.

Q. 13. As nearly as you can.

A. I guess it was after the war; it is a good long time; I could not tell that.

Q. 14. Was it more than fifteen years ago?

A. I cannot tell. I would not swear to that. It might be more, and it might not. I rather suppose it is, but I would not swear positively to it. It was when this track was in vogue up above here (Norristown)—when it was in full bloom. I do not think there was any patent or anything on this. I did not see any letters on it when I saw it. It did not seem that it was ever soiled or dirtied any.

Q. 15. I now call your attention to this device consisting of a strap with a chain hanging therefrom, with a wooden block upon the end, and ask you whether you have ever seen the same before.

A. I never saw that before, but I have seen blocks that was this long (indicating about 6 inches).

Q. 16. Have you ever seen somewhat similar devices before?

A. Like this?

Q. 17. Yes.

A. Yes; I used blocks with a strap, but they were this long, turning round, and the block hung down.

Q. 18. How long?

A. It might be six or ten inches long—eight or ten inches long.

Q. 19. Do you mean the chain?

A. No; I used the strap. There was a staple in it, and then there was a strap went right around the foot to keep the
224 horse from kicking in the stall. There ain't one horse out of twenty that will stand them. I have tried them to some horses to prevent them kicking against the stall with one foot back that way (indicating). I never saw that block until this morning. There was a strap from this; where the other strap was that went around the foot in place of the chain.

Q. 20. As I understand you, there was a strap that went about the leg of a horse, and hanging from that was another strap on the end of which there was a wooden block?

A. Yes; there was a wooden block.

Q. 21. And that this was eight or ten inches long?

A. Yes.

Q. 22. When did you use such device?

A. I used that during the war. I made it and got it up myself to keep it from kicking. I only used it a short time to keep the horse from kicking in the stall.

Q. 23. It was similar to this device which has been produced, excepting that in place of a chain there was a strap riveted to the leg strap, and this strap was considerably longer?

A. The strap that come up from the block was sewed, and then I had it padded so as not to take the hair off the horse's leg.

Q. 24. Which strap was padded?

A. One that went around the leg. I had a sheepskin inside.

Q. 25. Have you used such a device since the war?

A. Not for the last twenty years I haven't, because the horse I put it on kicked it all to pieces.

Q. 26. Have you seen such devices used by other persons?

A. No; I never saw any of them until I saw this here. I have seen George Hendrick's stable in Philadelphia, and I saw some similar to them.

(Answer objected to as incompetent.)

Cross-examination waived.

(Signed) JOHN PERRY.

225 EDWIN M. JOHNS affirmed.

By Mr. HUNTER:

Q. 1. What is your name, age, residence and occupation?

A. Edwin M. Johns; 54 years of age; 331 Lafayette street, Norristown; laborer.

Q. 2. Do you understand what is meant by interfering in horses?

A. Yes; as a general thing I do.

Q. 3. I now hand you a device, and ask you whether you have seen anything similar to it before.

(Here counsel for defendants hands to the witness a device offered in evidence, and marked Defendants' Exhibit "A.")

A. Do you want me just to explain what I have seen, or do you want me to answer your question?

(Question read.)

A. I have.

Q. 4. When and where?

A. In the possession of Stoughton R. Clark, either in the year 1868 or '69; '69 I think it was.

Q. 5. Did you see this device used upon a horse?

A. Yes, sir; and only upon one occasion.

Q. 6. Do you know whose horse or what horse that was?

A. A horse owned by Harry Hitner.

(Answer objected to as incompetent.)

Q. 7. How was this device, which you saw used by Stoughton Clark in 1868 or '69, carried by the horse? I mean, how was it attached to the horse?

A. The chain was attached to a shin boot, nothing like this. You know what a shin boot is? A shin boot is put round the
226 knuckle joint for protection—hind leg. This chain was attached to that boot. It was not as long as this. It was a chain apparently about that long, with five or six small links in it (Mr. O'Brien interrupting, "Indicating about two inches"), and a little ball at the end.

(The interpolation of Mr. O'Brien objected to by Mr. Hunter.)

The WITNESS (continuing): I would say about that long, with a little ball attached to the end of it, something in the shape of an onion, not round.

Q. 8. About how many inches long?

A. About two and a half inches; from two and a half to three.

Q. 9. For what purpose was this device used?

A. It was put on the horse as a preventative for brushing. Some call it interfering, but the term is "brushing" as horsemen know it.

Cross-examined.

By Mr. O'BRIEN:

X Q. 10. I believe you gave your occupation as that of a laborer?

A. Yes, sir.

X Q. 11. And your age 54 years?

A. Yes, sir.

X Q. 12. And you say you have seen this device that you have referred to in 1868 or '69?

A. At somewhere about that time.

X Q. 13. Where was that?

A. It was on the Globe track.

X Q. 14. At Norristown?

A. Yes, sir.

X Q. 15. Who put it on Harry Hitner's horse, do you know?

A. I don't know who put it on the horse. I know Stoughton Clark was on the track at the time, and I was on the track at the same time.

227 X Q. 16. What did Stoughton Clark have to do with Hitner's horse?

A. He was handling his horses; had charge of them.

X Q. 17. Did you talk with Stote Clark about it at that time?

A. Not as I remember.

X Q. 18. He did not tell you what he put it on for at that time?

A. I cannot remember as he did. I knew he put it on, because the horse was brushing, and that was the only time he ever used it upon a horse.

X Q. 19. As matter of fact, he did not tell you what he put it on for?

A. No; but that is what they generally put it on for. He did not tell me what he put it on for.

X Q. 20. That was your own conclusion from what you saw?

A. Yes, sir; I was handling horses at the same time, and we generally put boots on when we thought it was necessary.

X Q. 21. That was the first and last time?

A. That was the only time.

(Signed) E. M. JOHNS.

ELLWOOD R. SNYDER sworn.

By Mr. HUNTER:

Q. 1. What is your name, age, residence, and occupation?

A. Ellwood R. Snyder; I was 36 years old the 10th of January; 327 Cherry street, Norristown; superintendent of Mr. Adam Scheidt's lager-beer brewery.

Q. 2. Have you had any experience in connection with horses?

A. Yes, sir.

228 Q. 3. Are you the owner of a horse, or do you drive?

A. I drive a great deal; yes, sir, and have owned one, but have not got it at home now.

Q. 4. Do you understand what is meant by interfering in horses?

A. Yes, sir; I should think so. A horse interfering is cutting through shoing, I suppose.

Q. 5. I now call your attention to a device which is marked Respondents' Exhibit A, and ask you whether you have ever seen anything similar to it?

A. Well, when I was a boy, and up around Mr. Hitner's stables a great deal, there was a similar thing to that which attracted my attention, but the strap was wider, and a sort of a more plaited chain, like a dog chain, lighter, fastened to an interfering boot. I suppose it was; I don't know. I thought it was a pair of hobbles when I

first saw them, and I inquired, and they told me it was an inter-ing boot. The strap was much wider.

Q. 6. Who told you it was an interfering boot?

A. Mr. Stote Clark. I used to be around there a great deal. There is a wider strap now. Now, whether there was a boot attached to that strap, I could not tell, because it has been so long ago. It was a much wider strap than that, because I remember a chain hanging there, either chain or metal of some kind, and it was either riveted fast to this strap that went round the leg, and I asked him whether it was a set of hobbles; but this was lined inside with a lot of sheepskin to keep it from rubbing, and afterwards he told me it was an interfering boot hanging round at his stalls. He had box stalls there and an office there.

Q. 7. Did the chain hang down, or was the chain free?

A. The chain was free as far as I recollect. I was only a boy in them days, and did not know much about it.

Q. 8. When was it that you saw this?

A. I suppose it has been twenty or maybe twenty-two years since.

Cross-examined.

By Mr. O'BRIEN:

X Q. 9. You saw it hanging up there in the stable?

A. Just saw it hanging up. I never saw it used and did not know what it was used for.

229 By Mr. HUNTER:

X Q. 10. But Mr. Clark told you what it was used for, as you have testified?

A. Yes, sir; he told me it was an interfering boot when I inquired. It was a sort of a novelty to me, and boyhood-like, I asked out of curiosity.

(Signed) ELLWOOD R. SNYDER.

Adjourned to Tuesday, March 18th, at Philadelphia, at 10.30 a. m.

STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

I, A. H. Hendricks, do hereby certify that the foregoing depositions of Solomon Gilbert, John Perry, Edwin M. Johns and Ellwood R. Snyder were taken before me, as notary public and examiner by stipulation, in the cause of Haughey *vs.* Lee *et al.*, in behalf of the respondents, at Norristown, Pennsylvania, on Monday, the 17th day of March, 1890, in the presence of counsel for the complainant. That the said witnesses were duly qualified by me, and that their depositions were taken down stenographically, under my directions, by William A. Shaw.

A. H. HENDRICKS,
Notary Public and Stipulated Examiner.

230 HAUGHEY
vs.
LEE *et al.*

926 WALNUT STREET, PHILADELPHIA, *March 18th*, 1890.

Met pursuant to adjournment.

It is stipulated and agreed by and between counsel that the depositions in behalf of the respondents, to be taken in Philadelphia, may be taken stenographically before Wm. A. Shaw, Esq., a notary public, with as full force and effect as if taken before an examiner appointed by the court.

THOMAS MILLER sworn.

By Mr. HUNTER:

Q. 1. What is your name, age, residence and occupation?

A. Thomas Miller; 61; 878 North Twentieth street; horse-shoer and blacksmith.

Q. 2. How long have you been engaged in business as a horse-shoer and blacksmith?

A. When I was quite a little bit of a fellow; I went apprentice in 1844.

Q. 3. Where did you commence business as a horse-shoer for yourself?

A. I commenced for myself at Proudon Square, Montgomery county.

Q. 4. Were you in business in Norristown or near there?

A. Yes, sir; I went in business at Norristown in 1853, and continued until 1856, at Norristown.

Q. 5. Do you understand what is meant by interfering in horses?

A. Yes, sir.

231 Q. 6. Have you had more or less experience with devices intended for preventing or curing interfering horses?

A. Yes, sir.

Q. 7. I now hand you a device, which is entered as an exhibit in this case, and marked Respondents' Exhibit A, and ask you whether you have ever seen anything similar to that before?

A. I think I have, and I should not want to be positive; but I think I used the very thing myself in 1880.

(Answer objected to as being incompetent as to use by witness.)

Q. 8. About when did you first see such a device as that before?

A. It is pretty hard to answer that question. I have been handling what you may say speedy horses all my lifetime, and I was a little like a great many others. I never liked to stand still, and I wanted to know all I could learn, and, of course, I tried a little of everything, like a great many others do. Now, I don't know, but I guess that was used along in the sixties, when we had that track in Norristown. We had a track there, and it was between 1860 and 1870 anyway, I know that. It was sold for a brick yard in 1871 or '72.

first saw them, and I inquired, and they told me it was an inter-ing boot. The strap was much wider.

Q. 6. Who told you it was an interfering boot?

A. Mr. Stote Clark. I used to be around there a great deal. There is a wider strap now. Now, whether there was a boot attached to that strap, I could not tell, because it has been so long ago. It was a much wider strap than that, because I remember a chain hanging there, either chain or metal of some kind, and it was either riveted fast to this strap that went round the leg, and I asked him whether it was a set of hobbles; but this was lined inside with a lot of sheepskin to keep it from rubbing, and afterwards he told me it was an interfering boot hanging round at his stalls. He had box stalls there and an office there.

Q. 7. Did the chain hang down, or was the chain free?

A. The chain was free as far as I recollect. I was only a boy in them days, and did not know much about it.

Q. 8. When was it that you saw this?

A. I suppose it has been twenty or maybe twenty-two years since.

Cross-examined.

By Mr. O'Brien:

X Q. 9. You saw it hanging up there in the stable?

A. Just saw it hanging up. I never saw it used and did not know what it was used for.

229 By Mr. Hunter:

X Q. 10. But Mr. Clark told you what it was used for, as you have testified?

A. Yes, sir; he told me it was an interfering boot when I inquired. It was a sort of a novelty to me, and boyhood-like, I asked out of curiosity.

(Signed) ELLWOOD R. SNYDER.

Adjourned to Tuesday, March 18th, at Philadelphia, at 10.30 a. m.

State of Pennsylvania, } ss:
Philadelphia County, }

I, A. H. Hendricks, do hereby certify that the foregoing depositions of Solomon Gilbert, John Perry, Edwin M. Johns and Ellwood R. Snyder were taken before me, as notary public and examiner by stipulation, in the cause of Haughey *vs.* Lee *et al.*, in behalf of the respondents, at Norristown, Pennsylvania, on Monday, the 17th day of March, 1890, in the presence of counsel for the complainant. That the said witnesses were duly qualified by me, and that their depositions were taken down stenographically, under my directions, by William A. Shaw.

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Q. 2. How long have you been engaged in business as a horse-shoer and blacksmith?

A. When I was quite a little bit of a fellow; I went apprentice in 1844.

Q. 3. Where did you commence business as a horse-shoer for yourself?

A. I commenced for myself at Proudon Square, Montgomery county.

Q. 4. Were you in business in Norristown or near there?

A. Yes, sir; I went in business at Norristown in 1853, and continued until 1856, at Norristown.

Q. 5. Do you understand what is meant by interfering in horses?

A. Yes, sir.

231 Q. 6. Have you had more or less experience with devices intended for preventing or curing interfering horses?

A. Yes, sir.

Q. 7. I now hand you a device, which is entered as an exhibit in this case, and marked Respondents' Exhibit A, and ask you whether you have ever seen anything similar to that before?

A. I think I have, and I should not want to be positive; but I think I used the very thing myself in 1880.

(Answer objected to as being incompetent as to use by witness.)

Q. 8. About when did you first see such a device as that before?

A. It is pretty hard to answer that question. I have been handling what you may say speedy horses all my lifetime, and I was a little like a great many others. I never liked to stand still, and I wanted to know all I could learn, and, of course, I tried a little of everything, like a great many others do. Now, I don't know, but I guess that was used along in the sixties, when we had that track in Norristown. We had a track there, and it was between 1860 and 1870 anyway, I know that. It was sold for a brick yard in 1871 or '72.

Q. 9. Did you see such devices as this used upon a horse or horses at that time?

A. I cannot say that I seen them used, but they say those trainers on our track at Norristown—I say our track, because I was interested in it, owned some portion of it—used to come up to my shop and get pieces of chain, and I would ask them what they wanted it for, and they would say for using to put on horses to spread them and keeping them from cutting or not traveling square. Sometimes they would use it on one leg, and not the other, when they didn't just travel square. Now, that is the most I can say about the chain; whether they have used it for that purpose or not I cannot say, but I have cut off many a chain for them, three, four, or five inches long, just as they wanted them—six or eight inches long; sometimes three or four inches long.

Q. 10. Did you ever see one of these devices put upon a horse's leg?

A. As I say, I do not know as I ever have seen it more than what I have done myself on my own horse. I think I have used them, as I say, on my own horse in 1880.

(Same objection as before.)

232 Q. 11. Did you ever use such a device as this yourself?

(Question objected to as incompetent and not based upon the defense as set up in the answer.)

A. That is what I saw or think I did, for I used most everything.

Q. 12. Upon what portion of the horse's leg did you use such a thing?

A. Generally such a thing as that you put above the fetlock joint.

Q. 13. Who was it that first showed you such a device as this for interfering?

A. I do not know that anybody showed me. I cannot tell you. I do not think anybody ever told me; only, as I say, when they would come to the shop and want a piece of chain cut off, I would ask them what they were going to do with it. The reason I didn't get to see them was, they generally trained their horses in the morning, and I generally done it in the evenings on my own; so, of course, I never seen many of those trainers out with them, or anything of that kind.

Q. 14. Who were some of those trainers?

A. I forget the names of them. There were lots of them sometimes. Stote Clark was there a long while, and Wiley and Neall Tomany was there a long while.

Q. 15. Did Wiley ever make one of these devices?

A. I cannot say that he ever made any as I saw. I never saw them on. As I said, I cut the chains and I knew they wanted to use them for that purpose.

Q. 16. Did you ever cut one of these chins for Wiley?

A. Yes, sir.

Q. 17. And he told you they were for these purposes?

A. Yes, sir; and then they had longer ones cut to put around above the knee-joint.

Q. 18. How long were the chains made for these devices, which were used for horses that kicked?

A. They are generally made of different lengths, from eight, twelve to fifteen inches long, according to how bad they are.

233 Q. 19. Then they are similar to this device which has been offered in evidence?

A. Just exactly the same thing, only longer, and they have been used ever since I can remember a horse.

Q. 20. Have you seen such devices in use yourself?

A. I have put them on my own horses, just exactly such a thing as that. Used to have a strap and buckle around the leg and slip the chain through.

Q. 21. So far as you remember, did these trainers whom you have referred to always ask for chains for making these pendant devices?

(Objected to as incompetent and leading.)

A. Well, I don't know as they did; but I frequently asked, though, and sometimes they would say, what was the matter, and they wanted a chain of different weights, you know. Then, of course, at that time I did general blacksmithing, anything that came in, from a needle to an anchor, as the old saying is. I had the old chains round the shop, and, of course, I would select chains to suit the purpose.

Q. 22. They asked you for a piece of chain from two to five inches long and of different weights, and told you what they wanted it for?

A. They would say, "Cut it off like this, just this way;" not just exactly say how many inches, but I supposed.

Q. 23. Did they tell you what they wanted it for?

A. I have no doubt they did sometimes. If they did not, I would ask. I was generally inquisitive and wanted to know what they were to be used for.

Cross-examined.

By Mr. O'Brien:

X Q. 24. Where do you reside now?

A. 878 North Twentieth street.

X Q. 25. Where?

A. Philadelphia.

234 X Q. 26. How long have you lived in Philadelphia?

A. I have been living in Philadelphia twelve years ago last November; I came here in 1877.

X Q. 27. What business are you in now?

A. Horseshoeing.

X Q. 28. Where?

A. 1224 North Eleventh street.

X Q. 29. Where did you carry on business prior to your coming here?

A. I carried it on at Norristown.

X Q. 30. At what place?

A. The last place I had in Norristown was joining Shulz's hotel, back of the market; that was only a temporary place that I had for a little bit.

X Q. 31. When did you leave there?

A. I left there in 1871.

X Q. 32. Where were you prior to going there?

A. Prior to going there I ran a dry-goods store for about a year and a half on Main street. Before that I was running a shop up above Barbado street, at Norristown.

X Q. 33. Was it during the time that you opened the blacksmith shop, that you left the dry-goods business, that you refer to making chains for parties?

A. No; before that.

X Q. 34. Where were you located when you made these chains before that time?

A. Well, I done the most of them when I was on Main street, above Barbado, Norristown.

X Q. 35. That was how long ago?

A. I left there in January, 1870. I quit there then. I was all over the town. I think I went up there in 1863 or '64.

235 X Q. 36. Can you recall at this distance of time, from 1870 to 1890, any special instance where you made or cut off a piece of chain for any person applying to you for it, who said to you that he wanted it to prevent interfering in a horse?

A. I cannot specify no time that I have done any particular job, but it was occasionally done through the summer season of several years.

X Q. 37. Can you recall a single individual instance giving the name of the party?

A. Well, I think Mr. Wiley called very frequently; and I think Mr. Stote Clark; and I think Alonzo Wiley, if I ain't much mistaken. I would not think so, because it is a very odd occurence in business. A man cannot exactly remember unless it is a peculiar instance; but these things are so common that one would not think of putting them down at the very time. It is a thing that I never charged for. I charged none of my customers, because I had done their sulky work and track work, and horseshoeing, and if they came in for a little chain, I never said anything about it. I just cut it off and gave it to them. Understand me, I did not build their sulkies, but I usually put new tires on them, and repaired them and hooped them, and so forth.

X Q. 38. Did you know a man named John Perry, in Norristown, who kept a livery stable?

A. Yes, sir.

X Q. 39. Did you know him back in the seventies?

A. Yes, sir.

X Q. 40. Do you know whether he is living yet?

A. I don't remember whether he is living yet or not.

X Q. 41. You do not know that he testified yesterday in this case?

A. I don't know anything about it; no, sir.

X Q. 42. If such a thing were in common use in Norristown, do you think he would be apt to have seen it?

A. Not if he were not about the track. As I say, I did not see it myself.

X Q. 43. Then you have never seen this used in Norristown?

A. Not for the purpose. I have seen them on for kicking in a stable.

236 X Q. 44. But not for to prevent and cure interfering in a horse?

A. Not as I can remember, only I have heard them say they were used for that purpose.

X Q. 45. Then your testimony is on what you have heard them say?

A. Yes, sir.

X Q. 46. And that is all you know about it?

A. That is all I know about it, what they came and got the links for, that is all.

X Q. 47. You never saw this exhibit, marked Exhibit A, before you seen it here?

A. No, sir.

X Q. 48. You never seen it before?

A. No, sir; that is, not this mark.

X Q. 49. You have seen this before?

A. No; I never seen this before, not the strap and chain.

X Q. 50. Are you acquainted with the parties in this case?

A. No, sir. All I knowed about it was, a young man came up to my place some time ago and began to quiz around, and I was pretty busy, and I told him that he should not bother me. I asked what the trouble was, and I said, You had better see the trainers, and he wanted to know where they were, and I said, "All I know that are living is Solomon Gilbert, at Norristown." That is all he got out of me; that was my recollection.

X Q. 51. About how long ago was that?

A. I guess about six or eight weeks; maybe not so long.

X Q. 52. Did you tell him about Stote Clark also?

A. I do not remember as I did. I did not stop my work to talk to him, because I did not want to lose no time to come round for such a trifling thing as this. I did not pay much attention to him and did not say much to him.

237 X Q. 53. Do you own a horse now?

A. I do.

(Signed) THOMAS MILLER.

JOHN H. B. MILLER, sworn.

By Mr. HUNTER:

Q. 1. What is your name, age, residence and occupation?

A. John H. B. Miller; 39; 817 North Twentieth street; horseshoer.

Q. 2. How long have you been engaged in business as a horseshoer?

A. I have been around the blacksmith shop all my lifetime more or less, and I have been in business for myself nine years.

Q. 3. Then you are familiar with horses, and are more or less acquainted with horse boots?

A. Yes, sir.

Q. 4. I now hand you a device, marked Respondents' Exhibit A, and ask whether you have ever seen anything similar to that before?

A. I have never seen that mark before.

Q. 5. I mean anything similar to that device before?

A. Yes, sir.

Q. 6. Will you please state when and where?

A. Borough of Norristown, Montgomery county.

Q. 7. By whom was such device used that you have referred to?

A. I have seen a man by the name of Mr. Wiley use it.

Q. 8. Please explain how it was used; that it to say, how it was placed upon the horse?

A. It was placed upon the fetlock in one, two, three or four. It don't make no difference what kind of a horse it was. It
2:38 would depend upon what kind of a gait he had to balance on him. Sometimes he would only use two, one on the hind leg and one on the front leg, cate-cornered. Same as a horse I would have to-day; I put two different kinds of shields on the two front feet. Just use them according to cases of necessity. At that time we used them to keep the horse from kicking. At the present time they use them to prevent the horse from kicking in the stable.

Q. 9. Do they use them with a chain of this length to keep horses from kicking?

A. No, sir; that would not answer at all. It would take three and four times that long. If you want any more information I can give it. That is used for another purpose, too, to keep a horse from falling in the stable; tie their legs together; put a strap or anything else at all, a rope, to keep them from biting together, or from striking a man in the stable. You can take a rope or strap or a chain, if it can be got, and just tie their legs this way, to keep them from kicking when they are grooming them in the stable.

Q. 10. But those devices that you saw Alonzo Wiley use had the short chain, that was not suitable for the purpose of stopping the horse from kicking?

(Objected to as being leading and incompetent.)

A. Yes, sir; had a short chain. That chain would not keep a horse from kicking.

Q. 11. When did you see this device that you have described?

A. That is more than I can remember. As I said before, in the neighborhood of twenty-three or twenty-four years ago; might have been longer; might have been about that exact time, but I won't be positive in regard to the date.

Q. 12. Did you see these devices frequently?

A. I saw them. He had them on the horse now and then, and I saw him put them on, taking a piece of rope or anything at all, a piece of strap, and stick it through there.

Q. 13. Did you ever put on one of these devices yourself?

A. I did; yes, sir. Like all young lads will, they try to experiment, the same as I do to-day. If I see anything on the road, and can see anything in it, I will try it.

239 Q. 14. When these devices were put upon the horse at the fetlock, did the chain hang down?

A. Certainly; if you put that on the fetlock it would hang down; there would be so much weight it would fall down.

Q. 15. Did it swing when the horse was in motion?

A. Certainly; it would not stay still without they put another strap here to buckle it round the leg. If the horse was walking, that chain would move. If he only walks, that chain would jar.

Q. 16. Was the pendent portion always made of a chain?

A. Most of the time I seen that used there.

Q. 17. Did you ever see anything else used by Wiley?

A. I think I did.

Q. 18. What did Wiley use instead of the chain?

A. I think I seen them with wooden balls, slipped on a piece of string and tied on there.

Q. 19. Did he ever use anything than wooden balls?

A. Not that I know of, except the chain; he might have used something else; I did not go close enough to examine them.

Q. 20. Was this device, to which you have just referred, similar to this which I now hand you, excepting that the balls were made of wood?

A. Years ago it was round the horse's fetlock. Yes, I have seen him using wooden balls that were round things; I think they were wooden balls.

(The device referred to, and identified by the witness, is offered in evidence and marked "Respondents' Exhibit B.")

(The remarks of counsel objected to as not being supported by the statement of the witness.)

Q. 21. You saw such a device as this used by Wiley instead of the device marked Exhibit A, excepting that wooden balls were used instead of rubber balls; is that correct?

240 A. Yes, sir; I think he used wooden balls. I saw he had round things on them. I would not say they were rubber at all. They were in that style, but as I say, they were not as perfect as this. As I have said, I have seen people take a piece of rope, or a piece of strap, and slip them on.

Q. 22. Do I understand you to mean that he used balls, but not sure whether they were wooden or gum balls?

A. I have seen them take these and slip them on a piece of string.

Q. 23. What was Alonzo Wiley's business?

A. Horse-trainer; he used to speed horses and break colts; horses that were never handled before.

Q. 24. Did he use these devices to which you have referred in his business as a horse-trainer?

A. Yes, sir.

Q. 25. And it was his custom to use them?

A. It was his custom to use them according to how a horse hung himself.

Q. 26. Whenever a horse needed it?

A. Yes, sir; put that on or anything else; the same as they do nowadays; anything at all; they used them or any other kind of boot, smoothing boot, or according to what the horse required.

Q. 27. According to what the peculiarities of the horse required?

A. Yes, sir.

Q. 28. And this was about 23 years ago?

A. Yes, sir; might have been longer, I cannot say.

Cross-examined.

By Mr. O'Brien:

X Q. 29. You have testified in this suit before?

A. Yes, sir.

241 X Q. 30. How intimate were you acquainted with Alonzo Wiley, the trainer, at Norristown?

A. Because I was a boy running round the stable and going up to the track in the mornings.

X Q. 31. How intimate were you with him personally?

A. Just the same as I would be with an ordinary person; we were friendly together.

X Q. 32. How old a man was he?

A. I guess about forty or fifty years; somewhere round there.

X Q. 33. At that time?

A. Yes, sir; I should think so.

X Q. 34. How old were you?

A. About fifteen, or somewheres along there.

X Q. 35. How long did you attend school?

A. That is more than I can inform you. I cannot remember any more what time I did leave school.

X Q. 36. What school did you go to?

A. Public school.

X Q. 37. Where?

A. Norristown, Montgomery county.

X Q. 38. How far did you go in the school?

(Objected to as immaterial and not cross-examination.)

A. That is more than I can remember how far I did go. I went from Sandhill school to Oak school, and from there to Johnny

Lock's, and I did not go there long. I think in November or February I got my limb hurt, and then I stayed away from school.

242 X Q. 39. What year was that?

A. I do not remember any more what year that was.

X Q. 40. What was the nature of the injury?

A. Side cut of my flesh on my hip; jumping down the steps backwards.

X Q. 41. Were you laid up long with it?

A. Four or five weeks; somewheres along there; might have been longer.

X Q. 42. Where was that?

A. Norristown, Montgomery county.

X Q. 43. How old were you at that time?

A. That is more than I can tell you; I don't remember.

X Q. 44. Can you tell approximately; ten, eleven or twelve?

A. I was older than that. If I had known I had been going to be asked those questions, I would have referred back. I have been interested around horses all my lifetime, and I am at the present time. On Sunday mornings, I would go down to the track to see what was going on.

X Q. 45. Was this during the time of the Norristown track?

A. Yes, sir.

X Q. 46. Was it before 1870?

A. Yes, sir.

X Q. 47. Were you hurt since or before 1870?

A. Before 1870.

X Q. 48. You cannot remember the year?

A. No; I cannot remember.

X Q. 49. What schools did you say you went to; were you going to school in 1870?

A. No, sir.

243 X Q. 50. Were you going to school in 1865?

A. No, sir; I do not think I was, but I won't say positively.

X Q. 51. Do you remember any incidents of the war?

A. Yes, sir.

X Q. 52. What do you remember during that time?

A. I remember the morning Abraham Lincoln got killed. I was going down the road to collect a bill that morning, down to Mr. Magee's place.

X Q. 53. Do you remember the doctor that waited on you at Norristown when you were injured?

A. Yes, sir.

X Q. 54. Did you have more than one?

A. No, sir.

X Q. 55. What was his name?

A. Dr. Reed.

(This line of questioning is objected to by counsel for the respondents as frivolous and immaterial.)

X Q. 56. When did you see this thing marked Exhibit B?

A. I never saw it at all until Mr. Hunter showed it me this morning, or when he showed it to me the last time in the room as a witness. I won't say whether he did or did not. I did not see that mark on this before when I had it (referring to the words "Exhibit A").

X Q. 58. Who made this Exhibit B? Did you?

A. No, sir; I did not.

X Q. 59. Did Mr. Wiley employ you?

A. No, sir.

244 X Q. 60. Did he ever consult you as to the devices that he would use on his horses?

A. No, sir; I would ask him what he was using them for.

X Q. 61. When did you ask him those questions, and how often?

A. I could not say how often; because when I seen him put them on the horse, I would ask him what they were for.

X Q. 62. Can you give us any instance where you asked him any such questions?

A. I think on the Norristown track.

X Q. 63. Where was he and where were you?

A. There at the same time.

X Q. 64. At what part of the track?

A. Round the stables.

X Q. 65. Where were the stables located?

A. Round the outside of the grounds of the Norristown track.

X Q. 66. Who else was present?

A. That is more than I can tell you. There were others looking on at the time when they seen a man hooking up a horse.

X Q. 67. Was it during the races?

A. No, sir; as I said before, it was in breaking colts that he used them; in gaiting them and squaring them away.

X Q. 68. Did you not testify that he used this for weighting a horse?

A. Yes, sir, and gaiting. Weighting and gaiting a horse is the same thing.

X Q. 69. And he used a thing like this Exhibit B for that purpose?

A. Yes, sir.

245 X Q. 70. You are clear about that?

A. I suppose he used it; he put it on there for that purpose.

X Q. 71. Did he tell you that he put it on for that purpose?

A. Yes, sir.

X Q. 72. He told you that he put this Exhibit B, or one exactly like it, on for the purpose of weighting and gaiting the horse?

A. Yes, sir; weighting and gaiting.

X Q. 73. Did he indicate a thing with wooden or rubber balls, five of them, having holes through the centre through which a piece of rope passed doubled and knotted at the end?

A. Yes, sir; just slipped right over as this thing is here.

X Q. 74. How often did you see a device exactly like this?

A. I won't say how often.

X Q. 75. How often did you speak to him about it?

A. I couldn't tell you how often I spoke to him about it; but I asked him what he had them on for, and he told me, at different times, and I would ask him "if that horse needed them on there," and he would say "yes."

X Q. 76. How often did you see them?

A. I cannot say how often. He would use them every now and then on different horses. He used to have a stable full of horses to handle.

X Q. 77. I want to get at the specific fact. When you saw a thing made as that Exhibit B is, at Norristown, will you swear that what you saw was exactly as the same as that?

A. I won't say exactly the same as that, because they were wooden ones, but the idea was to rattle and to make the horse pick up and get away.

X Q. 78. The object he had them on for was to make a noise?

A. Yes, sir; same as this chain.

246 X Q. 79. Did he tell you that was the purpose?

A. Yes, sir.

X Q. 80. And that was the only purpose he told you he used them for?

A. Yes, sir.

X Q. 81. To rattle and make a noise?

A. Yes, sir.

X Q. 82. To gait a horse?

A. Yes, sir; to gait a horse.

X Q. 83. You are clear about that?

A. Yes, sir.

X Q. 84. You are sure that is what he told you?

A. Yes, sir.

X Q. 85. That he put them on in order that they might make a noise, being wooden balls?

A. Yes, sir.

X Q. 86. What was the noise intended to do to the horse?

A. Make it get up and down and get away.

X Q. 87. The object was to make him lift his legs?

A. Yes, sir.

X Q. 88. And he would use them on a horse irrespective of whether the horse interfered or not?

A. I won't say anything about that at all.

X Q. 89. All the horses that you know of that are broke need not necessarily interfere?

A. No, sir; not all horses.

247 X Q. 90. And he would use this arrangement Exhibit B, to put on a horse for the purpose of having the horse lift his legs?

A. Lift his legs and bound away.

X Q. 91. For the same purpose that a toe weight is used for?

A. Yes, sir; which I was just going to speak of. Now, for instance, I shod a horse last Saturday and I had to put a heavier shoe on one foot than another, and he hasn't got two shoes alike. They are different on the hind ones and front ones.

X Q. 92. Where would he put this pendant on Exhibit B; inside or outside of the legs?

A. He would buckle it tight; it didn't hang down.

X Q. 93. It would answer just as well on the inside as on the outside?

A. Yes, sir. It didn't have a buckle on and went round all the time.

X Q. 94. And he used it for the same purpose that he used the short chain?

A. Yes, sir.

X Q. 95. The same thing?

A. The same thing.

X Q. 96. And that was to give a horse gait, and to lift him right when throwing his legs forward?

A. Yes, sir; just the same as a horse standing this way or making a step this way (indicating). Some horses make a short step with one foot and a longer one with another. Just the same as I did last Saturday with the horse that I put different shoes on.

X Q. 97. How many of these different devices of different kinds and forms did you see Alonzo Wiley use?

A. He did not have anything like that; it didn't make no difference what they were. He would just pick up anything; he didn't have none manufactured for the special purpose at all.

X Q. 98. He never used one like this Exhibit B for stopping an interfering horse, so far as you know?

A. Not that I know of; not for that purpose.

248 X Q. 99. Is it not a fact that you saw these balls running round the horse's leg above the ankle?

A. Yes, sir; I have seen them balls used on a horse's fetlock, down between the foot and the fetlock.

X Q. 100. And that is the thing at this long distance of time that you remember instead of this Exhibit B?

(Objected to as a manifest effort to mislead the witness into contradicting himself, and attempting to put into the mouth of the witness the counsel's own words.)

X Q. 101. You have seen balls encircling the horse's leg?

A. Yes, sir.

X Q. 102. How long ago did you first see them?

A. I cannot inform you how long ago. They are used at the present time, some of them.

X Q. 103. How long ago did you first see them?

A. Years ago; twenty years ago, probably. I have not seen the gum balls. I won't say how many years, whether twenty-two or thirty years, or sixteen years. I have seen the gum balls used, and they are used to-day around the fetlock to expand the horse's legs out.

X Q. 104. And you first saw them with Alonzo Wiley?

A. I won't say whether I seen them with gum balls or wooden balls.

(Question repeated.)

A. I seen them with rollers in those days.

X Q. 105. What do you mean by "rollers"?

A. What they called rollers, motion balls. They would go right between the foot and fetlock joint to give them a lift and straighten them.

X Q. 106. Are you able to give me the year that you saw such a device as Exhibit B, if you saw one?

249 A. I cannot say exactly what year is was. I do not hardly remember, because, as I said, I seen it when I was a lad. As I said before, it might be twenty-five or twenty-six years ago.

X Q. 107. How many kinds of horses' boots do you know of?

A. I cannot tell you how many; there are so many kinds nowadays. Ankle boots, and toe boots, and others.

X Q. 108. Are you able to say that you can distinguish at this long distance of time the fact that you saw this particular construction as exhibited in Exhibit B?

A. Yes, sir; it hangs down that way. I remember seeing them chains and seeing them wooden balls, as I said before, slipped through a string and tied on.

X Q. 109. How long were they?

A. I could not say; might be that long (referring to Exhibit B), and might be longer or shorter. They used to have bigger balls pretty near round and pretty near three-quarters of an inch, or an inch, in diameter.

X Q. 110. How many of them would be on a string?

A. That is more than I can tell; I didn't count them.

X Q. 111. Would there be one or a dozen; give us an approximation?

A. It would not be a dozen.

X Q. 112. Give us an approximation.

A. Three, four, five or six.

X Q. 113. They would be three-quarters to an inch in diameter?

A. Yes, sir; that round.

X Q. 114. They were perfectly spherical, were they; they were perfectly round?

A. Not quite round; more on a flat. Some of them would be perfectly round and some of them would be like that, a little oval.

X Q. 115. Were you very intimate with Mr. Wiley?

A. Yes, sir.

250 X Q. 116. How often did you meet him?

A. Sometimes I used to meet him every day, sometimes I would be two and three days and wouldn't see him.

X Q. 117. But through the year?

A. During the summer time he was there.

X Q. 118. Only during summer time?

A. Only during the summer time. I would not say whether he was there all the winter or not. I was very intimate with him.

X Q. 119. Did you ever help him in the stable?

A. I never helped him in the stable. I did errands for him occasionally, the way a lad will, you know, when a person asks him to do a favor.

X Q. 120. Can you name any particular errand that you did for him?

A. No, not exactly.

X Q. 121. Did you ever take any lessons from him?

A. No, sir.

X Q. 122. Did you ever have any conversation with him particularly concerning the devices used in the manipulation of a colt to weight and gait him, and give him a gait?

A. Yes, sir; and he has told me different things.

X Q. 123. Is he alive or dead now?

A. He is dead.

X Q. 124. How long is he dead?

A. That is more than I can inform you how long he has been dead.

X Q. 125. You have never seen these things since you saw him use them?

A. No, sir; not until I seen them come out and seen them used. I won't say I used them myself; I have seen my father use them.

251 X Q. 126. Do you mean he used the chain or the balls?

A. The chain.

X Q. 127. Did you not see him use the balls, too?

A. I won't say whether I did or not.

X Q. 128. You say the object that Wiley told you he had in view in using the chain was to weight the animal?

A. Weight the animal and straighten them and square them away.

X Q. 129. And the same purpose he had in view after he used the wooden ball?

A. Yes, sir.

X Q. 130. Will you illustrate what you mean by weighting a horse?

A. Balancing. When their legs are not going right, you put more weight on them to steady them and carry them on. Sometimes a horse would get hopping, and by putting more weight there on the leg you would balance them away. Just the same as if you put anything in the palm of your hand and it gets light, and if you move it along there it gets heavier; and if a horse finds anything there, and finds it is heavier, he will pick up his foot and get away.

X Q. 131. Where did he put these things around the horse's leg?

A. On the fetlock; he would just put it right on the fetlock in that way.

X Q. 132. Loose?

A. Yes, sir.

X Q. 133. And it would run all around the leg?

A. He did not buckle them up tight.

X Q. 134. It did not make any difference where it was on the leg?

A. Right above the fetlock.

X Q. 135. It did not make any difference where the chain hung

down; whether it was outside or inside, so long as the weight was there?

A. No, sir; so long as the weight was there.

252 X Q. 136. I want you to fix, if you can, a specific time, as near as you can, when you saw a device upon a horse in charge of Alonzo Wiley similar to that shown in Exhibit B?

A. The only time I think I can refer to, in regard to that, I refer to my father to look over his books to see what time he did shoeing for Mr. Wiley. That is as near as I can go at it. That is, if he can find his books. I do not know any other way at all, sir.

X Q. 137. You are not able to tell, then, when a man had his horse shod, whether within a week or three weeks or a month, without looking at your books?

A. I can tell if a man comes within two or three weeks; but if it has been five or six weeks, I cannot tell what kind of shoes they were. I can tell when it is twenty-eight days or thirty days or thirty-one days.

X Q. 138. Did you graduate at any school?

A. No, sir; I did not.

X Q. 139. What was the first work you did?

A. Helping around the blacksmith shop.

X Q. 140. For your father?

A. Yes, sir.

X Q. 141. Do you own any horses yourself?

A. No, sir; I clean his horse and carriage and kept that in order, and now and then did little knick-knacks for others; got their carriages ready for them.

X Q. 142. Did you ever own any horses?

A. Not myself individually; no, sir.

X Q. 143. Do you know whether Mr. Wiley used to use devices for hobbling horses in the stable to prevent them from kicking?

A. Well, I won't say whether I did or did not. I think he did have one bad kicking mare that he put them on. I used to use them right along there. Some time ago there was a young

253 man used to come in there to have shoes put on his horse, and it used to keep kicking against the wall. He took five or six and hung them around the stall, and it only kicked one night at those, and now she stands right up against the stall.

X Q. 144. You are unable to tell us the year that you saw Alonzo Wiley have a thing, as you say you saw him have, as Exhibit B?

A. Yes, sir.

X Q. 145. Can you tell us when you seen it, whether it was in the stable or on the track?

A. Outside; not in the stable.

X Q. 146. Was the horse on the track?

A. Yes, sir.

X Q. 146½. It was being speeded at the time?

A. Yes, sir; on the track and on the road.

X Q. 147. Was the horse running at the time you seen it?

A. Yes, sir; I seen him running at the time, and I seen him walking at different times with them on.

X Q. 148. How many times did you see this specific thing, to the best of your recollection, that I now show you, Exhibit B?

A. I won't say how often, but I have seen him use it more than that (referring to Exhibit A).

X Q. 149. Can you give us an estimate, according to your best recollection, of how often you have seen him use a thing like Exhibit B?

A. I have seen him use it at different times, but I won't say how many times; but this I have seen him use (Exhibit A) more than that (Exhibit B).

X Q. 150. Can you not tell us some definite time? Be fair with us, and give us your best judgment?

A. That is what I am trying to do, sir.

254 X Q. 151. Did you see it twenty times?

A. I might or might not; I couldn't say how often.

X Q. 152. Will you say that you saw it any specific number of times?

A. No, I would not say.

X Q. 153. Will you swear that you seen it more than once?

A. Yes, I seen it more than once.

X Q. 154. Where did you see it once?

A. On the horse's leg.

X Q. 155. Whose horse was it?

A. That is more than I can tell whose horse it was. It is very seldom we can find out whose horse we have got to train; as, for instance, to-day a horse may be brought to my shop to be shod, and I don't know whose horse it is.

X Q. 156. Were the races in progress when you seen it?

A. Yes, sir.

X Q. 157. Where was Mr. Wiley standing?

A. He generally got in the sulky.

X Q. 158. Where was he standing at the time; not generally where he was, but where was he standing when you seen this on a horse?

A. He was standing at the side of the horse, or in the sulky. I have seen him both. He used to have men to attend to his horses, and then he used to buckle these things on.

X Q. 159. What boy did you see put it on?

A. That is more than I can remember.

X Q. 160. You were a boy yourself?

A. Yes, sir.

255 X Q. 161. You do not remember any of the boys who were round the stable?

A. I do not remember any of the boys at that time.

X Q. 162. How many boys did he have?

A. He generally had two or three young men round there working.

X Q. 163. What kind of a horse was it that you seen it on?

A. He had all colors of horses; bays, browns, blacks and sorrels.

X Q. 164. What kind of a horse did you see this thing like Exhibit B on?

A. I would not say what color it was. I have seen this on different colored horses.

X Q. 165. Was it a black horse or white horse?

A. I never seen any on a white horse, I am positive of that.

X Q. 166. Was it a black horse that you saw a thing on like this Exhibit B twenty years ago?

A. I cannot recollect what color the horse was. I didn't see it on no white horse, I am pretty positive of that.

X Q. 167. Did you see it on a bay horse?

A. I seen it on a bay horse, certainly; he had plenty of bays all the time.

X Q. 168. So you are positive you seen it on a bay horse?

A. Yes, sir.

X Q. 169. Why?

A. Because they are always them, or black, more or less.

X Q. 170. And that was the only horse he had?

A. No, he had all kinds.

X Q. 171. Now, I want to know what kind of a horse you saw this on twenty years ago?

A. I will say a bay horse.

256 X Q. 172. Will you swear on your oath that it was on a bay horse that you seen this Exhibit B twenty years ago, the horse being in charge of Alonzo Wiley, at Norristown?

A. Yes, sir. As I say, he had them on different colts, and this, too, on different horses, and I cannot name the horses exactly or who the horses belonged to. I don't know what horses he had himself. He handled horses that belonged to different parties.

X Q. 173. Are you positive that it was a bay horse you seen it on?

A. I don't know. He used it on all kinds of colored horses he had there, and he had some blacks, and bays, and sorrels, and as regards the white horses, I don't know whether he ever had any white ones or not. He had it on a bay horse.

(This line of questioning is objected to as frivolous and immaterial. The color of the horse has nothing whatsoever to do with the matter at issue.)

X Q. 174. Can you tell us the color of the horse you saw this thing—like Exhibit B—on twenty years ago?

A. They use them on all colors of horses.

(Question repeated.)

A. Yes, sir; I will say that he had it on a bay horse.

X Q. 175. You will swear to that?

A. Yes, sir; I will say that he had it on a bay horse.

X Q. 176. Where was the horse when you seen it?

A. In harness.

X Q. 177. What kind of harness?

A. Carriage harness.

X Q. 178. Silver or gold mounted, or plain?

A. I cannot inform you of that, sir.

257 X Q. 179. What kind of a vehicle, then, was he attached to, if any?

A. He generally broke his horses in in a four-wheel wagon, what you call a skeleton wagon.

X Q. 180. What kind of a vehicle was this bay horse in, that wore this thing (like Exhibit B) that I hold in my hand, when you saw it at Norristown?

A. Skeleton wagon.

X Q. 181. Was anybody in the wagon?

A. Certainly; he was in the wagon.

X Q. 182. Where were you?

A. Standing by.

X Q. 183. Who was talking with him?

A. I won't say if anybody was talking to him or not.

X Q. 184. Were you talking to him?

A. No doubt I was. Whenever he was about, I would talk to him when he was not engaged, and I would see him driving the horse along.

X Q. 185. Can you tell us what year it was you saw this on this bay horse?

A. No, sir; I cannot.

X Q. 186. Now, what other color of a horse did you see it on about that time?

A. I have seen him have different colored horses there. I won't say what other colors.

X Q. 187. I mean on any other occasion, if you saw this on a horse more than once?

A. I have seen him put them on horses more than once.

X Q. 188. You say you saw it on a bay horse at the track. Now, what other kind of a horse did you see it on?

A. He put it on other horses, too. Generally, the color or the horses they had there was bays, browns, or blacks.

258 X Q. 189. Do you mean us to understand that he put this on all his horses?

A. I did not say that he put it on. I seen him use that on a few horses.

X Q. 190. You saw him use Exhibit B a few times?

A. Yes, sir.

X Q. 191. How many times; twice or three times?

A. A little oftener than that.

X Q. 192. What do you mean by a few times; how many times do you mean?

A. Eight or ten times, maybe less, probably more; I cannot say how often. I seen the horses going along, more or less; seen him jogging along. I never seen what color of a horse he had, or what kind of a harness he had on or not. As I say, I seen him use this (Exhibit A), more than that (Exhibit B). I used that (Exhibit B) myself not long ago; I bought a pair.

X Q. 193. Who did you buy it from?

A. One of Thomas Morgan's men.

X Q. 194. That was one of the Haughey boots?

A. Yes, sir; bought it from Mr. Morgan's place.

X Q. 195. Did you buy it?

A. I paid for it myself. I sent one of my boys down for it.

X Q. 196. What did you use it for?

A. To put on a horse's hind leg.

X Q. 197. What for?

A. For spreading.

X Q. 198. To stop him interfering?

A. Yes, sir.

259 X Q. 199. Did it help him?

A. Yes, sir.

X Q. 200. That was in this city?

A. Yes, sir.

X Q. 201. How long ago?

A. September, a year ago, I think, I bought it.

X Q. 202. Have you got it yet?

A. No, sir; I loaned them out to a party, and he hasn't returned it yet. Three or four have used them, and whenever I got them back I loaned them out again, and never got them back.

X Q. 203. That was the first time you used them since you saw them with Wiley?

A. Yes, sir.

X Q. 204. The one you bought from Morgan had the patent stamp on it?

A. Yes, sir.

X Q. 205. Do you remember what you paid for it?

A. Two dollars.

X Q. 206. About how much do you think you could get up a thing like this Exhibit B for?

A. I don't know. Do you mean without the strap?

X Q. 207. Yes, to make it yourself.

A. I don't know. I don't know what the balls are worth.

X Q. 208. Supposing they are worth two cents apiece, how much would it cost you to make it?

A. I do not think that would cost much. I do not know what a harness-maker would charge for the strap, and I do not know
260 what they would charge for the balls. As I say, I can make it myself, putting them through a rope, and I do not think it would cost much.

X Q. 209. You don't think it would cost a dollar?

A. I cannot say that. As I say, I have sent a good many parties down there to get them. I got one myself.

X Q. 209½. You have bought a good many of them, and sent other people there?

A. I have only bought one pair myself, but I have sent other people there.

X Q. 210. How many pairs have you bought yourself?

A. I have only bought one pair myself, individually.

X Q. 211. How many have you sent after them since a year ago last September?

A. I never sent after them myself, but I told them to go to the place and get them. I took notice that a great many of them are used.

X Q. 212. Those differences in the weights and lengths of the chain like Exhibit A, that you seen Alonzo Wiley use were determined by the character of the horse?

A. Yes, sir; that is correct of which I informed you before.

X Q. 213. And that is true also of this Exhibit B, this thing here with the balls on?

A. Yes, sir.

X Q. 214. And you understood that it was merely experimental with Wiley?

(Objected to.)

A. No; it was perfect work for him. It was for him to gait them and square them away. If a horse didn't give satisfaction, that is what he put them on for.

X Q. 215. Did you not testify in this case that it was merely experimental?

A. Experimental and to get them to go square.

261 X Q. 216. Then it was experimental.

A. It was to get them to pick up and square away; pick up their limbs. When they found a weight there, they would pick up their limbs and get away.

X Q. 217. Sometimes they would pick up one piece of chain, and if it was too light, they would add something to it?

A. Yes, sir; add something to it. Sometimes they would take a piece of dog chain, and sometimes a piece like that; that is called trace chain.

X Q. 218. And he was experimenting?

A. Yes, sir.

X Q. 219. And you understood that he was only experimenting with these different devices?

A. Yes, sir. He used to make them all the time heavy and light.

X Q. 220. And these chains were used to stop kicking?

A. Yes, sir; and still used at the present time, to-day.

X Q. 221. And they used different lengths of chain to stop kicking?

A. Yes, sir.

X Q. 222. They did at that time and they do now?

A. Yes, sir; they do now at the present time. Just the same as I would put a pair of shoes on to-day and I would put an ounce on more than another, and if I found it was too light I would put on a heavier weight. This old gentleman would not put any on his horse. He is a butcher, and they have lots to make their hot water, and they have ropes to hang their blocks on. They put up a new stable and had the posts all kicked away, but he didn't use any chain. He was using a block on a rope.

X Q. 223. Instead of a chain he would use a piece of string or a rope?

A. Yes, sir.

X Q. 224. Same things as trying the balls on?

A. Yes, sir.

262 X Q. 225. He did not always tell you what he used them for?

A. Yes, sir; squaring away.

X Q. 226. But, he never told you that he stopped interfering in a horse?

A. No, sir.

X Q. 227. And instead of putting them below the ankle joint, if it was necessary to overcome any peculiarity in a colt that he was gaiting, why, he would tie something around?

A. Yes, sir.

X Q. 228. And all the time he was trying to ascertain the nature of the horse and its temper by these means?

A. Yes, sir. Same as tying on the fetlock to make them pick up and get away quick.

X Q. 229. There was no necessity then for a leg strap made of leather for any of these devices that Mr. Wiley used, that you have seen in this examination?

A. No, sir. If he didn't have no strap he would pick up a piece of rope, and if he had no buckle handy, he would just take a piece of string and put it round the chain and tie it.

X Q. 230. As I understand it, he used this chain and these wooden balls; that is, Mr. Wiley used them, to accomplish the same object that you have seen since that time accomplished by what is known in the trade as toe weights.

A. Yes, sir; that is it.

X Q. 231. And they did only the work that toe weights did?

A. Yes, sir. That is what I was working at years ago, and my father would not let me, and one came out afterwards. Same as this I have in my pocket (producing card with illustration on). In those days there was no patent on it, and now there are four patents on it.

X Q. 232. And you understand the effectiveness of these devices, hanging them to a rope or a string, or a strap round the horse's leg depended for their effectiveness upon their weight?

A. Yes, sir.

263 X Q. 233. And that was the only object he had in view?

A. Yes, sir; to gait and square away a horse.

X Q. 234. And the same is used at the present time?

A. Yes, sir; the same as I see at the present time. That Exhibit B come out to gait and square horses. That is what I was informed they came out for when I seen them and this article was patented.

X Q. 235. You never seen them used off the track by Mr. Wiley?

A. Yes, sir; I used to see them used on the road. Like a good many men in those days did, and do to-day, instead of taking them on the track to break them they will jog them on the road.

X Q. 236. But it was only at such times as that you seen him with a horse that was being broke?

A. Yes, sir.

X Q. 237. After the horse was broke there was no use for those things afterwards?

A. No, sir.

X Q. 238. Neither for Exhibit A nor Exhibit B?

A. No, sir. There is no occasion for any other use but for taking a horse nowadays and putting them on, and they open their legs, and expand them, and gait them and carry them away. A horse that goes right don't need them on at all. Same as shoeing a horse nowadays—have to go even.

Redirect examination.

By Mr. HUNTER:

R. D. Q. 239. You have stated that Wiley was a horse-trainer?

A. Yes, sir.

R. D. Q. 240. After he broke a horse he would send it back to its owner, would he not?

A. Supposed to do.

264 R. D. Q. 241. Then the horses that he was handling were only horses that he was breaking?

A. Yes, sir; same as men make a business of it nowadays.

R. D. Q. 242. When you say that Wiley was experimenting with these devices, do you mean that he was experimenting to find out whether a dangle made of a chain or other device could be used, or whether he merely tried different lengths and sizes and weights of chains upon a horse to find out which was suited to the peculiarities of the particular horse he had in hand? Which do you mean?

A. He was not experimenting himself individually. He knowed they would work on a horse, but he tried them on a horse to see if they would work on that animal and see which one the horse required, lighter or heavier. He would get them to go on one leg perhaps all right, and then find out that they required one a little heavier, and put them on to straighten their legs away.

R. D. Q. 243. And he commonly used devices of this kind in his business as horse-trainer?

A. Yes, sir; this kind, and all other kinds of boots.

R. D. Q. 244. He used this kind of a device just as he would use the other kind of horse boots, accordingly as whether or not the horse needed it?

A. Yes, sir.

R. D. Q. 245. And when in use the dependent portion dangled from the strap or means of support and struck the leg of the horse?

A. Yes, sir; certainly. If the horse traveled close enough it would strike his leg and he would carry a fuller head, try to pick his feet up and get away from him. Same as going along the street to-day. I had a dog come up to my leg, and I did not know what it was struck me.

R. D. Q. 246. These strings of balls or rollers, which are placed about a horse's leg are not the same as this device marked Exhibit B, are they? I mean the string of balls that they put around the leg is not this.

A. No, not that at all. There are two connections where that has a string of balls and has only one connection.

R. D. Q. 247. What did you use the Haughey device for?

A. To spread the horse.

265 R. D. Q. 248. In the same way as you would use a toe weight to spread a horse?

A. Toe weight or quarter weight; they put a quarter weight on to spread a horse.

R. D. Q. 249. And that is the way in which Alonzo Wiley used these devices?

A. Yes, sir.

Cross-examined.

By Mr. O'BRIEN:

X Q. 250. You never thought anything about weight in connection with buying the Haughey boots for use; you knew that they were of a specific construction?

A. Yes, sir.

X Q. 251. The idea of weight did not occur to you then?

A. No, sir.

(Signed) JOHN H. B. MILLER.

(Adjourned.)

266 HAUGHEY *vs.* LEE *et al.*

926 WALNUT STREET, PHILADELPHIA,
March 19th, 1890.

Met pursuant to adjournment.

JAMES O'ROURKE, sworn.

By Mr. HUNTER:

Q. 1. What is your name, age, residence, and occupation?

A. Stable boss for the Singer Manufacturing Company; 717 and 719 South Twelfth street. My residence is 420 Dean street; have been in that neighborhood for forty-five years.

Q. 2. How long have you been engaged in business as stable boss for the Singer Manufacturing Company?

A. Since 1878, excepting a few times I might go out with the wagon when they are short of a hand. Before that I was fourteen years with the Adams Express Company, as driver.

Q. 3. Do you understand what is meant by an interfering device?

A. I do not understand you. I am not well educated, you know, and I want to know what I am talking about.

Q. 4. Do you know what is meant by interfering in horses?

A. Yes, sir; I ought to; I have been long enough at it, God knows, since I was ten years old. I can explain to you all kinds of boots, interfering boots, speeding boots, graving boots set at the front; then there is what they call quarter-stretch boots, and interfering boots, and shin boots.

267 Q. 5. Have you ever heard of, or seen a horse boot, in which there was a strap about the leg of a horse at or near the pastern joint, and a piece hanging from that strap?

A. I can explain to you in a different way, if you will allow me. Them is what they call dangled boots. I think I have got two sets of them down at our stables now. I got them from Mr. Gallagher. They call them dangles.

Q. 6. When did you first see these boots?

A. The boots I have got.

Q. 7. Boots of that kind.

A. I sold them in Harkness' bazaar with my big horse—Hamiltonian horse—with a speedy and quarter-stretch boots. I sold the whole of them. I gave Gallagher $18 for them, I think.

Q. 8. My question is, when did you first see them?

A. Six months ago.

Q. 9. I now show you a boot, and ask whether you have ever seen anything like it before?

A. I never did, to the best of my knowledge. I understand this. Now, the ones I disposed of at Harkness' had little round balls on.

Mr. O'BRIEN: Here the witness is shown the Deamer device.

(Counsel for the respondents objects to the interpolations upon the record by counsel for the complainant. Any statement that the counsel has to make may be properly placed in the record at the proper time, and not interpolated during the answer of the witness or the questions of counsel.)

(Counsel for complainant here states that the defendants' counsel occasioned the remark and interpolation which he complained of by handing to the witness a device similar to the Deamer device in evidence in this cause, which does not bear any mark of being an exhibit therein, and desires to have it understood that his objection is made for the purpose of preserving the integrity of the record.)

(Counsel for the respondents states that he will offer in evidence, or mark for identification at the proper time, any devices which he may use, and upon his failure to do so it will be fitting and proper for complainant's counsel to act.)

268 (The device referred to is now introduced and marked for identification Complainant's Exhibit C.)

Q. 10. Am I to understand, then, that prior to six months ago when you first saw these dangled boots, you had never seen a device having a part that hung down, either such as the dangled boo with the balls, or that shown in this exhibit, or of any other character whatever?

(Question objected to as *been* too vague, general and indefinite.)

A. I do not understand this; what did you name that boot?

Q. 11. You say just what you want, and it will go right down on the record if there is anything you do not understand.

A. I do not understand the name you give that boot.

(Question withdrawn.)
(Objection to withdrawal of question.)

Q. 12. I mean, have you ever seen any boot other than the dangled boot with the balls?

A. Yes, sir.

Q. 13. In which there was a hanging or dangled part?

A. None excepting the dangles made by rubber balls. I suppose there were six, to the best of my knowledge, and some were large, and some were small. I can describe a hundred boots to you, but that there don't have anything to do with them.

Cross-examined.

By Mr. O'BRIEN:

X Q. 14. How long have you been a resident of Philadelphia altogether?

A. Since I was nine years old. I have been a citizen of Philadelphia since 1856.

X Q. 15. And you have all that time been engaged round horses?

A. Yes, sir.

269 X Q. 16. And fourteen years with the Adams Express Company in Philadelphia?

A. Yes, sir.

X Q. 17. And how long with the Singer Manufacturing Company?

A. Since 1878.

X Q. 18. A period of twelve years?

A. Close onto it.

X Q. 19. Have you been thrown in daily contact with horses and horsemen during all of those years in this city?

A. All my life, since I was ten years old.

X Q. 20. And you have been in the habit of observing horses on the street, and horses that you had the care and charge of, as to whether they were wearing any particular boot to prevent them from striking and from chafing, and a multiplicity of defects which were overcome by modern contrivances?

A. Yes, sir; all of them.

X Q. 21. And in all of that time, I understand you to say, that you have never seen a boot, such as that was shown you by the defendants' counsel?

A. Yes, sir.

(Here counsel for the complainant shows the boot, and states that it is identical with the Deamer device heretofore in evidence in this cause.)

(The WITNESS:) I did not deal with Deamer; I dealt with Gallagher. I used all his boots pretty much. He is the man I generally deal with, Ninth street above Market.

X Q. 22. This is the first time that you ever saw a boot like that called the Deamer device?

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X Q. 22. This is the first time that you ever saw a boot like that called the Deamer device?

A. To the best of my knowledge.

X Q. 23. If they had been in common use to prevent interfering in this city in the last twenty years, would you have been liable to have seen them?

(Objected to as incompetent.)

270 A. Well, I pay a great deal of attention to horses on the street. Of course, it is my business. If I see a horse limp, or a horse with a shoe off, I can always pretty near tell it. My own remedy is old straw boots for our horses. You know what kind of a boot that is, but I use all kinds of boots.

X Q. 24. Mr. Gallagher, you say, is on Ninth street near Market, between Market and the next street north, and he keeps a saddlery and horse-goods place?

A. Yes, sir; he is noted as a bootmaker; finest in the country, I believe.

X Q. 25. He has been in business here a long time?

A. Yes, sir.

X Q. 26. Do the boots you buy from him have rubber balls dangled down like that from the leg strap?

A. Yes, sir.

X Q. 27. And they have a metal plate fastened at the top?

A. Yes, sir; a little black plate.

X Q. 28. Did he not tell you they were Haughey boots bought from a bootman on Market street?

A. Not to my knowledge.

X Q. 29. Did you not know they were a patented boot?

A. To the best of my knowledge, they are.

X Q. 30. You heard they were Haughey's patent?

A. I could not say that, because I don't want to say a thing I don't know.

X Q. 31. Did you use them on your horses you sold down at the bazaar?

A. I did; yes, sir.

X Q. 32. How did they work?

A. They worked pretty well, but they didn't spread him enough.

271 X Q. 33. Was he an old horse?

A. He was a Hamiltonian. He was a half brother of Billy Button. He wasn't quite seven years old when we sold him.

X Q 34. The dangled boot was a new thing at that time when you bought it from Gallagher, was it not?

A. I knew the dangled boot a little previous to this, but not a great while.

X Q. 35. A year or so?

A. That I couldn't say.

X Q. 36. But you are positive that you have never seen anything like this Deamer device before you seen this one exhibited to you by Mr. Hunter?

A. To the best of my knowledge, I never did.

Redirect examination.

By Mr. HUNTER:

R. D. Q. 37. When did you first hear of the dangled boot before you got those from Mr. Gallagher?

A. I have seen them down at Point Breeze track when I would go down to exercise my horse. I have seen them on the road occasionally, and my employer, Thomas H. Ober, told me I had better get a pair of dangled boots for that big horse, to see if he would spread himself a little behind, and to the best of my knowledge, that was a year, or a year and a half, before I got them from Gallagher.

R. D. Q. 38. Did they all have this dangle made of rubber balls?

A. All that I ever seen. I suppose they are gum. There were about six of them. I think they commenced with two or three small ones, and then they commenced a size larger, and down below that again they commenced small.

R. D. Q. 39. You have said that these dangled boots did not work well?

(Objected to.)

A. I did not say that, my dear sir. I said the horse did not seem to spread very well with them, and on account of selling the horse we did not want the boots.

272 R. D. Q. 40. Do you know why the horse did not spread himself well with these boots?

A. I cannot answer that question.

R. D. Q. 41. You do not know of any reason why they did not work to spread the horse sufficiently?

A. The horse did not lift high enough behind—high enough to suit us, and we came to the conclusion to buy another one. He was not fast enough for my employer. He wanted a faster horse and a horse that didn't need any boots, and he told me to take him to the bazaar and sell him, boots and all. He was a little weak in the knees, and that was the reason we got rid of him. He used to stumble. He was a big, overgrown thing.

R. D. Q. 42. But those boots did not make him spread his legs as you wanted?

A. Not as we wanted; no. I do not think they are any benefit to a horse anyhow; them speed boots.

LEWIS S. LEE, affirmed.

By Mr. HUNTER:

Q. 1. What is your name, age, residence, and occupation?

A. Lewis S. Lee; thirty-eight; member of the firm of Jesse Lee & Sons, manufacturers and wholesale dealers in horse goods.

Q. 2. How long have you been engaged in business?

A. I have been in that store since March, 1869.

Q. 3. Are you more or less familiar with horse boots and interfering devices?

A. Yes, sir.

Q. 4. Are you acquainted with the so-called Haughey boot?

A. Yes, sir; I have seen that, and we have had it in our store.

273 Q. 5. When did you first hear of this boot?

A. My first knowledge of this boot was seeing an advertisement of it in a newspaper. Some time afterwards I saw one of the boots. I suppose it was a year ago that I saw the boot. It is impossible for me to answer that question with perfect accuracy.

Q. 6. Prior to that time, had you ever seen a horse boot having a pendant portion free to swing from a leg strap, or other means of support on the horse?

A. Yes, sir; I had, and that made me think it strange that any one could obtain a patent on a device of that description.

Q. 7. When and where did you first see such a boot; I mean other than the Haughey boot?

(Objected to as incompetent.)

A. It is impossible for me to say just when and where I first saw such a boot, but I have a very definite recollection of seeing a boot of that character some years ago. I was coming down Marshall street, and near the corner of Callowhill street I saw a team with two horses attached to a heavy wagon. On the fore leg of one of those horses there was a boot which attracted my attention by its swinging motion, and as I slowly passed the team, I looked to see what it was. I had no interest in the matter at the time, excepting mere curiosity; but I distinctly recall that the boot consisted of a strap of some sort encircling the leg of the horse, and that pendant from this strap was a piece of some dark colored material several inches long, probably an inch and a half to two inches wide, but not quite so thick. This pendant swung freely as the horse moved. The horse was walking.

Q. 8. I now hand you a device which has been marked for identification in this case as Complainant's Exhibit C, and ask you whether this device with reference to which you have just testified was similar in general appearance to this device?

A. Very similar. The only difference that I can perceive is that the one I saw struck me as being a little broader than this, and it swung more freely than this does. I suppose it had been in use for some little time, or else maybe had been constructed with a fuller loop. I do not know that the other was rubber. I do not know the material; I did not examine it.

Q. 9. Can you tell about how long ago this was that you saw this boot?

A. It was over six years ago. I have endeavored to recall more definitly when I first saw the device, but am unable to asso-

274 ciate it with other facts which would enable me to do so. I say over six years ago, because I am positive it was prior to serious illness which I had at that time. My belief is that it was between six and ten years ago.

Q. 10. Then you are positive that it was prior to the year 1885?

A. I have not the faintest doubt.

Q. 11. I would call your attention to the fact that the alleged infringing devices manufactured by the defendants in this suit are marked "patent applied for." Can you tell me from your own knowledge whether these devices were made under an application for letters patent?

(Question objected to as incompetent, the record being the best evidence.)

A. An application was made for a patent on the device, and it was on that account that the boots were stamped "patent applied for."

Q. 12. Are you aware whether letters patent have been granted upon that application?

(Same objection as before.)

A. Yes, sir.

Q. 13. I produce here letters patent No. 423,854, granted Charles L. Busch, for an improvement in horse boots, and ask you whether this is the patent which was granted upon the application under which these alleged infringing devices were made, and in accordance with which the said alleged infringing devices were marked "patent applied for," as you have testified?

(Objected to as incompetent.)

A. Yes, sir; this is the patent.

(Counsel for the respondents offers in evidence a printed copy of the letters patent referred to, to wit: letters patent No. 423,854, Charles L. Busch, March 18, 1890, and the same is marked Respondents' Exhibit "Busch Patent.")

Q. 14. Before the firm of Jesse Lee & Sons, of which you are a member, entered upon the manufacture of these so-called Busch boots, did you inquire into your right to so manufacture them?

(Objected to as incompetent.)

275 A. Mr. Busch, in offering the patent to us, assured us that he had made inquiry and had been informed by a patent attorney that the construction which he exhibited was not an infringement upon anybody's patent. We afterwards made inquiry ourselves, and received similar assurance. This, in conjunction with our positive knowledge that swinging pendants had been used before, satisfied us that we would not be entrenching upon any one's rights by manufacturing and selling the device shown by Mr. Busch. I think that covers the question you asked me. (Continuing:) The latter construction being quite different in its details from the boot we had seen and known as the Haughey boot.

Q. 15. I observe that these letters patent to Charles L. Busch, heretofore referred to, are granted to Walter Lee. Is this the same Walter Lee who is a member of the firm of Jesse Lee & Sons?

A. Yes, sir.

Q. 16. In your business in selling the so-called Busch boot did you ever represent, or, so far as you are aware, did any of your firm or salesmen represent this Busch boot as being the same as the so-called Haughey boot?

A. On the contrary, our salesmen were instructed to point out the distinctive features of our boot, and to sell it upon its evident merits. We ourselves never represented it as the same or even as similar to the Haughey boot. We considered it a much superior article in every respect.

Cross-examined.

By Mr. O'BRIEN:

X Q. 17. Please enumerate what you consider to be the distinctive features that differ in the so-called Busch device from the Haughey patent?

A. An important distinctive feature is the fact that the strap encircling the horse's leg, and to which the balls are attached, is all in one piece. There is no joint, much less a loose joint. That is an important feature. There are various differences in detail, all combining to render the boot better adapted for the purposes in view, and to secure greater durability.

X Q. 18. What reasons do you ascribe for the statement that the Busch device contains no loose joint?

(Objected to as calling from the witness expert evidence, whereas the witness has not been placed upon the stand as an expert, but simply to testify as to matters of fact. The witness is instructed that he may refuse, if he so desires, to answer the question.)

(Question read.)

276 A. I will answer that question, or not, according to my attorney's instructions.

X Q. 19. Is that the only answer you have to make to that interrogatory?

(Counsel for respondents states that the witness may answer the question; but at the same time he gives due notice to the counsel for complainant, that he will not permit a continuation of examination upon matters of expert evidence.)

(Counsel for the complainant states that he is warranted by the questions and answers of the witness-in-chief to assume the defendant to be capable of understandingly answering the questions propounded, or that may be propounded, in that respect.)

(The WITNESS:) Answering the question as a business man of ordinary intelligence, and not as an expert with special knowledge of nice distinction and mechanical terms, I would say that I think there can be no joint so long as there is no break in the continuity of the material.

X Q. 20. You have handled the Haughey device, have you not, prior to the 16th of September, 1889, in your business?

A. The boot known as the Haughey interfering device?

Mr. O'BRIEN: Yes.

(The WITNESS:) Yes, sir; I have handled it.

X Q. 21. When you say "I have handled it," you mean the defendants have done so?

A. Yes, sir; I mean personally that I have handled a few specimens of it, and there have been some, I don't know how many, in the store.

X Q. 22. You were aware at the time that they were a patented article?

A. I had heard that there was a patent claimed on them.

X Q. 23. Did you ever examine them prior to the 16th of September for the purpose of seeing whether there was a patent mark upon each pair?

A. I am unable to answer that question positively.

X Q. 24. But you knew generally that it was a patented article?

277 A. I heard that there was a patent claimed on that device, and for that reason we were very careful not to make anything like it without raising the question of patent or no patent.

X Q. 25. And so you made the so-called Busch device?

A. Yes, sir; we did, esteeming it an entirely different article.

X Q. 26. About how many of the Haughey boots had you sold prior to entering upon the manufacture and sale of the Busch boot?

A. I cannot possibly answer that question, as I am not in charge of the sales in the store. It would necessitate an examination of invoices to answer that question.

X Q. 27. Who is Charles L. Busch?

A. Charles L. Busch is a young man in our employ, as foreman of a manufacturing department in our business.

X Q. 28. Was he so occupied, and in your employ, prior to the 16th of September last?

A. Yes, sir.

X Q. 29. Is he now?

A. He is.

X Q. 30. Do you know where he worked previously to coming into your place?

A. He was a member of a firm known as the Philadelphia Turf Goods Company.

X Q. 31. How long has he been in your employ?

A. I will not be positive about it, but I think it was about as long ago as May, 1889; about that time.

X Q. 32. Do you not know that previous to coming to work to your firm he was employed by Thomas Morgan, the horse-boot maker, on Arch street, in this city, and engaged in the manufacture of the Haughey patented boot, the patent of the complainant in this suit?

278 A. I do not. I know that he was employed by Mr. Morgan prior to engaging in business as a member of the Philadelphia Turf Goods Company, but I do not know whether he ever made any Haughey boots while he was in Morgan's employ.

X Q. 33. When did you first become aware of the Busch device?

A. I cannot give you the date of the Busch device. It was some time prior to the date of the application for the patent.

X Q. 34. Was it assigned by Busch prior to the application for the patent?

A. Was the assignment made prior to the application?

Mr. O'BRIEN: Yes, sir.

(The WITNESS:) So far as I am aware, the assignment and the application went together. My brother would have to answer that question, as it is assigned to him and not to me.

X Q. 35. So you are of opinion that there is a radical difference between the Haughey patent and the Busch device?

A. Yes, sir.

X Q. 36. You made an affidavit in this case on motion for the preliminary injunction, I believe?

A. I believe so.

X Q. 37. Recurring to the question of the time of making the assignment as connected with the time of application, I see the assignment of the patent or application for a patent was dated on the 10th day of September, 1889, and the application was filed on the 16th day of September of the same year. Would those dates be in harmony with your idea of the transaction?

A. I must again remind you that that portion of the transaction was attended to by my brother, and not by myself.

X Q. 38. He is one of the defendants in this suit, is he not?

A. Yes, sir; he is one of the defendants in this suit.

X Q. 39. In your affidavit you stated that you were familiar with the various horse boots and interfering devices that had been upon the market for a number of years past, and that you
279 fully understood the Haughey interference device as illustrated in the letters patent, No. 379,644, and in the devices sold by the said Haughey, under these letters patent; that you were also familiar with the device known as the Busch dangled boot, such as is exhibited in the exhibits in this case. Are you still in possession of information of the character embodied in that question, and contained in the affidavit referred to?

A. I do not understand the question.

(The question is objected to as being frivolous, and, in fact, no question at all.)

(Question read.)

A. I cannot say that I understand that question so as to answer it intelligently.

X Q. 40. Do you remember having used such language in the affidavit, which you swore to last January, upon the motion for a preliminary injunction?

A. I recollect that there was a clause of such nature as that in the affidavit, though, of course, it is impossible at this interval for me to remember the precise language.

X Q. 41. Would your recollection be refreshed by referring to the affidavit itself?

A. It would.

X Q. 42. I will hand you the copy which your counsel served upon me, and ask you to consult it.

A. Which is this particular matter that you refer to?

Mr. O'BRIEN: The matter on the first page.

(The WITNESS:) Yes, sir; at the time that affidavit was made it correctly embodied my views and belief.

X Q. 43. Has anything occurred since to lessen your information and capacity to testify concerning the mechanical structure, arrangements of parts and purposes relatively of the device known as the Haughey patent and the Busch device?

A. No, sir.

280 X Q. 44. Do you, or do you not, affirm that the Busch device is possessed of a pendant?

A. According to my understanding of what a pendant is, it is not possessed of one. I should not call the attachment in the Busch boot a pendant.

X Q. 45. What would you call it?

A. I would call it a projection.

X Q. 46. From the nature of the material and its arrangements in the Busch device, may it not become pendant?

A. In practical use, no.

X Q. 47. Did you, or did you not, ever make a boot, and sell it, which you considered to be pendant?

A. Answering the question personally, not to my knowledge.

X Q. 48. Do you remember selling a pair of boots to me in October last?

A. Yes, sir; I remember the fact of selling them to you, without remembering the date.

X Q. 49. Do you remember the character of boot that you sold me?

A. I simply remember, that at the time you came in there, there happened to be no salesman in the store, and that I went out and got a pair of boots from a drawer in front of the store, and sold them to you. I have no very clear recollection of that particular pair of boots.

X Q. 50. Can you state whether it was the Busch boot or the Haughey boot?

A. It was a Busch boot.

X Q. 51. In the affidavit, which I have heretofore referred to, you used this language: "That, from the peculiar construction set forth in the Haughey patent, this object is very imperfectly accomplished, and does not produce the results which it is intended to produce, for the reason that the loosely jointed pendant does not at all times swing out in the manner intended for the purpose of striking the opposite leg." Do you remember making that statement?

A. I remember making a statement to that effect.

281 X Q. 52. Upon what information was that statement predicated?

A. First of all, various persons who had bought the boots of us, made statements to us to that effect, and said that the Haughey boot was unsatisfactory for that reason among other reasons. There was

also another reason, which was the outcome of reflection upon the subject by me; and, briefly, this may be said to be the necessity for presenting to an animal of limited intelligence, like a horse, of an apparatus simple, direct and regular in its action, rather than one uncertain in its action. The Busch boot, as we were making it at the time the suit was brought against us, and for some time previously, had been constructed so as to avoid, as we believed and intended, any possibility of its becoming pend*a*nt. We thought that we had a right to make a pend*a*nt boot if we chose to do so, because our construction was totally different from that shown in the Haughey boot, but we were striving to make a boot which, at all times, would project from the leg to which it was attached, never strike anything else than the opposite leg, and would not at any time be liable to strike the leg to which it was attached.

X Q. 53. Is that object attained in the Busch device?

A. We think so, as we were making it at that time, I am quite confident that it was attained.

X Q. 54. The material is leather and rubber throughout, is it not?

A. Rawhide, leather, and rubber, with a metal buckle. Those are the chief materials—and the balls, they are rubber too.

X Q. 55. And, in your judgment, that construction will stick out under all circumstances of wear, when a horse has it upon his limbs, working or moving about?

A. It certainly would, in my opinion, according to the way in which we were constructing it at the time this suit was brought against us.

X Q. 56. You stated in your direct examination that about six years ago, near Marshall and Callowhill streets, in this city, you seen upon a horse a pendant. Do you know whose horse it was?

A. I do not; for, as I stated in that same answer, I was attracted only by curiosity, and I looked at the boot, but not critically at the team, to see whose it was.

X Q. 57. How closely did you examine the boot?

A. I was passing close to the curbstone, and the horse and the team was walking in the street, less than ten feet away from me.

282 X Q. 58. Did you determine the material composing this boot that you refer to now?

A. I did not; as I previously stated, I could not tell what the material was. It was dark in color, and about the dimensions I therein stated.

X Q. 59. When did you next see a boot of that kind, if you ever saw one?

A. I cannot state definitely any time.

X Q. 60. That, however, is the only positive recollection you have of previously having seen the dangle?

A. That is the only one which I can locate with so much precision. I have seen dangled attachments on horses at other times and in other places, but I cannot be definite as to when and where.

X Q. 61. How came you to purchase and use the Haughey pat-

ent previous to getting up this Busch device, if, as you testify, you had positive information of a previous dangle interfering boot?

A. We did not raise the question of patent at all. The Haughey device was on the market as an article for sale, and having some calls for it as such, we bought it and sold it.

X Q. 62. In your direct testimony, you stated that one of the reasons for going into the Busch enterprise was that you had positive information of the existence of pendants in the market for interfering. Did you mean to limit yourself to the information you had of the Haughey device?

A. I did not refer to the Haughey device at all, if I understand your question, but among the other things to this pendant which I saw myself in use.

X Q. 63. Did you have any other positive information, aside from this team that you seen on Marshall and Callowhill streets, of the existence of a pend*a*nt interfering device prior to the Haughey patent?

A. I had heard of such things.

X Q. 64. I mean, have you any positive information personally of any pend*a*nt dangled device to prevent interfering in horses, aside from this observation you made of the horse referred to on Marshall and Callowhill streets, other than the Haughey device?

283 A. There was none at that time. Mr. Busch and my brother told me that they knew of such cases, Mr. Busch particularly. I should add that in the early part of this matter I had very little to do with it; that Mr. Busch and my brother, in the earlier portion of the transaction, attended to it, because my brother attends to that portion of our business, the manufacturing and the selling, while I am in the office.

X Q. 65. Then, when you say you had positive information of the prior existence of dangled boots prior to the Haughty patent, you mean that such information consisted of the device you saw on the team of horses on Marshall and Callowhill streets, and what Busch and your brother Walter told you?

A. Also other boots on horses which I had seen at different times, but regarding which I cannot testify with the same precision as I do of this one particular case. I regarded my recollection of that matter as positive knowledge.

X Q. 66. This is an important branch of your line of business, is it not, the improvement in interfering boots?

A. I considered it a matter of very little importance.

X Q. 67. You considered, or your firm considered, it of sufficient importance to assume the costs of obtaining a patent for Mr. Busch, did you not?

A. We did not consider the investment of a hundred dollars in a patent a very great investment. When we have reason to believe that an article has merit, we can readily see where that investment should yield us a remunerative return.

X Q. 68. You considered it of sufficient importance, did you not, to issue circulars in connection with the Busch boot?

A. There was, I believe, one circular issued last fall, or rather it was a circular gotten up for a man who wanted to sell some of the boots at the Mount Holly fair. Aside from that little circular, I do not recall any advertisement at all. That was something that was gotten up in a great hurry for him. He was anxious to have some kind of advertising. That is the only one I remember.

X Q. 69. Is this the one that you refer to (handing witness a paper)?

A. Yes; that is the circular I mean.

(A copy of the same that has already been offered in evidence in the *prima facie* case is shown the witness)

284 X Q. 70. These circulars, you say, were gotten up for a man who wanted to make some sales of the boots for you?

A. Yes; he wanted to take them up to Mount Holly fair.

X Q. 71. I see this circular ends with the name of your firm, "Jesse Lee & Sons," and immediately following the name, "owners of patent and manufacturers." What does "owners of patent and manufacturers" mean in that connection?

A. You will observe that it is marked at the top "patent pending." That is what is meant by the person who put it there. I did not write it. I never saw that circular until after it was written.

X Q. 72. Did the circular correctly represent the Busch dangled boot, as you conceived it, in the cut on the upper left-hand corner?

A. It is a very poor representation of the Busch dangled boot, because the artist, in drawing it for the purpose of showing as much of the boot as possible, has tilted it up so that it does not, to my eye, look very much like the boot. I was shown that cut which represents the boot before the circular was printed, and intended to send it back to him to draw over again, according to the boot which I know was sent to him to make his drawing from; but I was told that this party above referred to was in such a hurry for his circulars that they wanted to use the cut anyhow, so long as it showed a boot. We have never used it since, that I am aware of. I know we have never gotten any circular out from it. I have never seen one around the store.

X Q. 73. Have you advertised the Busch boot in any other way than this circular?

A. I would not like to limit myself to a positive answer on this point. To the best of my recollection, there is a line on a salesman's advance blotters which says "Busch gait-spreaders." There is no cut. If there was any newspaper advertising of it, I do not at this moment recall it. I cannot say that there was none, because I am not sure.

X Q. 74. Your salesmen have handled it since the application was made practically?

A. Yes, sir; our salesmen were furnished with samples of the boots since the application was made for the patent, and orders were taken for the boots.

X Q. 75. How many salesmen did you have out handling it?

285 A. I think that four of them had it. I could not tell you positively, because I do not make up the salesmen's lines of samples.

X Q. 76. You knew what territory they covered?

(This line of questioning is objected to as not proper cross-examination.)

A. I do not know which salesmen had the samples, and therefore I do not know which territory was covered. For all such things I would be obliged to refer to orders and letters and correspondence, which I do not profess to carry in my mind.

X Q. 77. You have in your direct examination identified the device shown in this patent, No. 423,854, dated March 18th, 1890. Do you recognize the drawings in that as correctly representing the Busch boot?

A. That represents the Busch boot as it was made in the earlier stages of manufacture. We have made several improvements on it in detail since then with a view of stiffening that projection, and also making the boot more effective generally in some other details.

X Q. 78. What is the object in stiffening that projection?

A. One of the objects in stiffening that projection is to enable us to dispense with part of the balls. We can use a shorter projection by dispensing with part of them, because the stiff projection enables us to strike the opposite leg every time, whereas, if there is too great flexibility, sometimes the projection will not strike.

X Q. 79. Have you ever inquired into the weight that a horse of say 1,200 pounds, going at say six miles an hour, would strike the earth?

A. No; I have not.

X Q. 80. You do not know, then, anything about the amount of the shock necessary to deflect the striker, as you call it, of the Busch boot sufficient to strike the leg upon which the boot is attached?

A. I have no scientific knowledge upon that point, I might say.

X Q. 81. Have you any practical knowledge?

A. No, sir; I do not even drive a horse. My knowledge is simply that of a business man?

286 X Q. 82. Now, in your affidavit before referred to, you stated that you were informed and believed that the Busch dangled boot was the true and sole invention of one Charles L. Busch, of Philadelphia. Did you think so at that time in January last?

A. I thought so at that time; yes, sir.

X Q. 83. And do you think so still?

A. As embodied in this patent? So far as my knowledge extends, the improvement as embodied in that patent is the work of Charles L. Busch.

X Q. 84. You know what the meaning of an invention is in that line of goods, do you not?

A. I do not know whether I can answer that question, if it is intended to give a definition of a tech*in*-al term.

X Q. 85. The intention of the question is not technical, and it is substantive.

A. I should understand by an invention a new thing, or such an improvement as would entitle the inventor to the protection of a patent.

X Q. 86. Had you previous to the Haughey boot ever had in the stock of your store, to your knowledge, an interfering boot with a dangle attached to it?

A. I do not remember ever having anything of that kind in the stock. I would not like to say that we never had, or that we did have.

X Q. 87. What is your best judgment?

A. I do not recollect; I really do not remember. We have had quite a variety of interfering devices, but whether any of them ever had a loose joint as is shown in the Haughey device, I do not recall; I do not remember anything of the kind.

X Q. 88. You know that the Haughey device has a pendant composed of a centre strap surrounded by rubber balls, four or five in number, and attached to the leg strap?

A. I know it has a pendant, which is attached to a loop, and the loop is attached to the leg strap?

287 X Q. 89. What difference is there between the Haughey device and Busch device in that respect? Please state any distinction.

A. The Haughey device consists of three separate elements, and the Busch of but one.

X Q. 90. Name the three separate elements of the Haughey boot.

A. The pendant, the loop, and the encircling strap.

X Q. 91. And now, the Busch?

A. The Busch consists of that continuous strap which carries the balls, passes through the pad, encircles the leg, and is secured by the buckle at the end.

X Q. 92. What is the general appearance as to sameness when the two devices are placed opposite to each other on a horse? That is, the Haughey boot and the Busch boot?

A. The same difference as there is between a wooden locomotive and a real one. They are both cut after the same model.

X Q. 93. They look alike?

A. Yes, sir; they look alike, but they do not act alike, and they are not constructed alike.

X Q. 94. The Busch possesses the same rubber balls that the Haughey did, distinct from its attachment to the boot; is not that true?

A. The ball support attached from the boot?

Mr. O'Brien: Yes.

(The Witness:) The balls slide upon the strap.

X Q. 95. Are the balls adapted to be used interchangeably on either the Busch or the Haughey device?

A. I do not know whether I understand that question or not.

X Q. 96. Can you take the balls off of the Busch device and put them onto the pendant in the Haughey device?

288 A. I should suppose so, because the balls are an old thing

that are bought in quantities. The patent on them ran out long ago; they are made in quantities by manufacturers.

X Q. 97. And the same balls may be used on both devices?

A. Yes, sir.

X Q. 98. And, as matter of fact, the same material on both devices?

A. I should judge so; they are very easy to get.

X Q. 99. Now, what kind of material is the Haughey balls strung upon?

A. I do not know.

X Q. 100. You know whether it is leather or paper?

A. It is some kind of leather.

X Q. 101. What kind of material are the Busch balls strung upon?

A. They are strung upon rawhide.

X Q. 102. Is that leather?

A. That is one kind of leather; it is untanned leather.

X Q. 103. How does the Busch boot prevent interfering in a horse? By what action, when attached to the horse, does it bring about that result?

A. In the same manner, but more effectively than other projecting devices. It invariably strikes the opposite leg when the two feet of a horse are brought too closely together.

X Q. 104. In the words "other projecting devices" in your answer, do you include the Haughey device?

A. No, sir; I do not. I mean devices which we sold at various times since I have been in the business, some composed of rubber, and some, one at least, of bristles, which were intended to effect a similar result, but they were different in their construction.

X Q. 105. From what?

A. From the Busch boot.

289 X Q. 106. Were they different from the Haughey boot?

A. They were different from the Haughey boot.

X Q. 107. What was the difference between them and the Haughey boot, as you recollect it?

(Objected to as not proper cross-examination.)

A. They were composed of entirely different materials. They were so widely different in construction that it is hard for me to give a general answer to that question.

X Q. 108. Would these prior devices, with which you were acquainted and refer to in your answer, operate in the same manner as the Haughey device?

(This line of cross-examination is strenuously objected to, first, because it is going into matters of expert evidence, whereas the witness is testifying as to matters of fact; second, because it is not cross-examination, and, third, because the "other devices" have not been properly illustrated or described in the question, and the question is therefore ambiguous.)

(Question repeated.)

(The WITNESS:) The things that I referred to when I gave that answer were not similar to the Haughey device. I was instituting a comparison between them and the Busch device. These were not pendants that I was speaking of then. I think that is sufficient.

X Q. 109. Assuming that the strap encircling the leg and carrying the balls of the Busch device is not tightly drawn up, what effect would it have upon the balls?

A. The whole affair would fly round out of its place, and would be utterly worthless as an interfering device. It would not keep its place on the horse's leg.

X Q. 110. Would not the balls drop down from the shield or pad, which is made a part of the strap encircling the horse's leg, and thereby become pendant?

A. I have already answered that question, that it would not stay in its place. The probabilities are that the whole thing would slide down the horse's leg, perhaps over his ankle and on his foot.

290 X Q. 111. Supposing the stitching on the outside rim of the shield was removed, and the space between the balls and the outside of the shield be pulled outwardly, and the device then buckled upon the horse's leg, what effect would that condition have upon the balls in the Busch device?

(Question objected to as ambiguous.)

(Question read.)

A. We did not make the boot that way. I do not know what would happen if somebody would try to destroy it. I never tried such an experiment.

X Q. 112. Did you not make some exhibits that were used in court upon the motion for a preliminary injunction in this case, having the threads that attached the strap to the shield continued so as to hold the striker—I believe is the term you use in the Busch device—close up to the shield?

(Objected to.)

A. I should have to examine those exhibits in order to answer that question. I was not in court when that matter was under discussion.

X Q. 113. Have you not made the Busch boots so as to draw the striking part up tight, and have it project laterally when you buckled it on the horse?

(Objected to as not proper cross-examination, and the witness is instructed that he need give no testimony as to structures that he has made, or has not made, other than those which are concerned in this controversy.)

X Q. 114. Mr. Lee, you have been in the harness business, manufacturing and selling horse boots, pretty much all your life?

A. I have not been in manufacturing so long.

X Q. 115. You have had charge of the manufacturing?

A. No, sir; my brother has charge of the manufacturing. I told you that earlier in the examination. You seem to have forgotten.

My work is in the office. I have charge of the finances, and know more or less of what transpires in our store, and have endeavored to answer your questions from the facts presented in this case; but I am not in charge of the manufacturing.

X Q. 116. You were sufficiently informed upon the branch of business having relation to these interfering boots to be able to make the affidavit that you did heretofore?

291 A. Yes, sir; that was made so far as my knowledge and belief extended.

Mr. O'Brien: I now submit that he is competent to testify upon the questions.

Mr. Hunter: I submit that he is not, and I object.

X Q. 117. Has not your house manufactured Busch dangled boots having the stitching continued on the outer edge of the shield through the leg strap, or that part of the leg strap which surrounds the horse's leg, and which prevented the drawing up of the striker or the tightening of it between the upper ball of the striker and the stitching referred to?

(Question objected to as not being cross-examination. The question of what devices were made by the respondents, and as to whether or not those devices were infringements, should be proved in the complainant's *prima facie* case, and not by means of improper cross-examination of a witness, and the witness is instructed not to answer this question.)

(Question read.)

(Objection thereupon withdrawn.)

(The Witness:) I would not like to give a positive answer about that, because I have seen so small a portion of the boots that have gone out of the factory, from the fact that I am in the office and do not handle them. It may be that some of them were that way; I won't say no. I really am not qualified to answer that question. I know this, that I saw some in the store one day and sent them up to the factory, and told them that I did not think that was the best way to construct them, and had them altered; but they were never out of the store, never sold.

X Q. 118. As matter of fact, you have stated in your direct examination that you were always careful to point out to customers to whom you sold the Busch boot, the difference between it and the Haughey boot.

A. I said we were careful to point out its distinctive merits, I think. I do not think that I said that we were careful to point out the difference between it and the Haughey boot, or trouble ourselves about the Haughey boot. Of course, that matter was brought into discussion sometimes on account of the similarity in appearance.

X Q. 119. Did you not state, in your affidavit, that there was a difference in the construction between the two?

A. Yes, sir; there is a difference in the construction between the two.

292 X Q. 120. And did you not state in that, that you made it an object to point out those differences?

A. You have asked me, first of all here, what I stated in my direct evidence, and now you ask me a question from my affidavit. The language of the two may not be the same. If you will put your question in some other shape, I will endeavor to answer it. I am under the impression that in giving my direct examination I did not mention the Haughey boot.

(The last answer of the witness in the direct examination was then read.)

X Q. 121. As matter of fact, did you point out to patrons of this class of interfering boots the different merits or differences, if any existed, between the Haughey boot and the Busch boot?

A. Our salesmen were especially instructed to point out the distinctive merits of our boot, and to try to sell the boot on the strength of those merits, and not by disparaging other people's goods. Whether they obeyed their instructions or not, it is impossible for me to say.

X Q. 122. Were you in the habit of pointing out to customers the differences, if any, between the Haughey boot and the Busch boot?

A. Do you ask that as a matter of my own personal action, or the action of the firm?

X Q. 123. Your knowledge, either gathered from the firm, or from your own personal observation?

A. So far as I am aware, it was not customary to bring the Haughey boot into discussion unless the buyer did, and if any question was raised upon the subject, we always pointed out wherein we held that the two differed both in their construction and their method of operation.

X Q. 124. You so instructed, as a matter of fact?

A. As a matter of fact.

X Q. 125. Were you acquainted with any difference between the two constructions in material and substantial parts?

A. Was I acquainted with the construction in the material?

293 X Q. 126. In material and substantial parts?

(Objected to as already answered.)

A. I stated, or, we stated, what we believed to be the differences.

X Q. 127. Will you state now what such differences are aside from the continuous strap?

A. That would be a repetition of my previous evidence. This is going over a lot of old ground.

X Q. 128. Do you refuse to answer the question?

(The question is objected to for the same reasons as the previous question, and for the reasons pointed out by the witness, that he has already fully and completely answered that question upon cross-examination, and I would request the examiner to refer to that part of the evidence, and to read those answers.)

(Question read.)

(The WITNESS:) Among others, the ability to take up any looseness in the parts by means of the buckle and strap, the covering of rubber by means of which there was assistance given the pad holding the boot in its place, and preventing the strap from cutting the horse's leg. In the later patterns that were made there was also an improvement in the way in which the outside ball—I mean the one farthest from the pad—was attached to the strap, whereby liability to cut, scratch, or otherwise injure the opposite leg, was avoided; the neat and ornament-like way in which the boot was put together; the ease with which any injured or broken parts could be replaced without need of sending to the manufacturer; the diminished liability of the boot to get out of order because there were no mental parts to rust out, unless it be the buckle by which the strap was secured; and the operation of the boot in always striking the opposite leg, and thus presenting a single condition to the interfering horse, making him see clearly that if he did not carry his feet apart the device would always strike him on the opposite leg. I give you, in this way, some of the leading points as I can recall them thus hastily. There were doubtless others which I have omitted.

X Q. 129. You have thus enumerated what you deem to be the virtues of the Busch device over the Haughey device?

A. I have enumerated some of the merits. I do not profess to have answered the question in all its full extent. I may have inadvertently omitted points.

294 X Q. 130. Would you deem the acquisition of the exclusive sale of the Busch device a valuable one in your business?

A. Yes, sir; I consider the Busch device valuable to us.

X Q. 131. Quite valuable, or moderately so?

A. We have had it in our possession too short a time to place exact figures upon its value, and therefore that is a question which would require very nice consideration to answer it correctly. In my opinion, the Busch device is a very good thing, especially in conjunction with some improvements in detail, which will increase its effectiveness and durability.

X Q. 132. Such a device fills a very valuable want in the horse-boot business, does it not?

A. Such as the Busch device does.

X Q. 133. And it has been a long-felt want, has it not?

A. It is a want which has been met in various ways by various devices, which have met with a greater or less degree of favor; but, as I have already stated, I am unable to say just to what extent it may have filled a felt want, as we have not had sufficient opportunity to test the fact.

X Q. 134. But so far as you have gone, your impressions are very favorable of its being very valuable?

A. We thought it was, or else we would not have taken up with Mr. Busch's patent.

X Q. 135. There is one question which I forgot to ask you in its order, in connection with your seeing this horse boot in a team of horses on Marshall street and Callowhill street, in this city, over

six years ago. Did you remember that at the time you made this affidavit in the motion for a preliminary injunction?

A. I do not know whether I had that in my mind when the affidavit was drawn up or not. I knew the fact long before. Whether it occurred to me just at the time or not, I do not know.

X Q. 136. Had you not had several interviews with your counsel prior to the making of this affidavit concerning its make-up?

A. Concerning what?

295 X Q. 137. Concerning the make-up of that affidavit. Had you not had several interviews with your counsel concerning its make-up?

A. I am under the impression that I heard the affidavit read over, and was told that it was the ordinary form of answer used in those cases, and I signed it accordingly.

X Q. 138. Who supplied the facts?

A. The facts on which it was founded were supplied partially by myself and partially, I suppose, by others.

X Q. 139. Whom do you refer to by the others?

A. I mean my brother, Walter, and Mr. Busch.

X Q. 140. Can you give no other reason for not mentioning this unknown owner of the horse than that it had not occurred to you when you made this affidavit?

A. I did not make up the affidavit myself, and therefore I did not order anything put into it or omitted from it; but, as I say, it was presented to me by the counsel as being the ordinary form of affidavit, and I signed it accordingly. In reading it over, it seemed to embody the facts of the case. I, of course, knew of this boot that I speak of long ago. I should further add that when the injunction was served upon us, I felt so confident that we were right that I believed the ordinary formal answers would fully sustain our case, and therefore gave the matter far less consideration than I would have done otherwise. Had I had, at any time, the slightest idea that we were indeed invading the rights of any one as a matter of principle, I would have refused to have anything to do with it; but I felt quite sure, from what knowledge I had in my possession, that the complainants were charging us with something of which we were not guilty.

X Q. 141. In other words, you did not think you were making the Haughey device?

A. I never thought that for one moment.

X Q. 142. You do not think so now?

A. No, sir; I do not.

X Q. 143. You do not think the Busch device is an infringement of the Haughey device?

296 A. Undoubtedly I do not think it is an infringement of the Haughey device. If I had any occasion to think it was an infringement of the Haughey device, it would never have been made in our establishment.

X Q. 144. Did you know Alonzo Wiley?

A. Personally, no; I never knew Alonzo Wiley.

X Q. 145. Have you had any personal acquaintance with John H. B. Miller?

A. I do not know John H. B. Miller, personally. I am not acquainted with him; no, sir.

X Q. 146. You do not know anything about what their devices were?

A. Only from hearsay. I have seen the devices which were shown me as the ones they knew of, but I never had any personal interviews with Mr. Miller.

X Q. 147. You never have seen them on a horse in your life?

A. I could not say whether I have or not, and I do not know which ones you refer to. I have seen dangled devices. The one which I have been asked to mention with particularity is the only one which I can recall to give clearly enough such positive evidence, but I have seen dangled boots on the streets and on the roads, at different times, and it may be that one of them was one of these Wiley devices.

X Q. 148. All that you have positive knowledge about, and of which you are able to speak positively, is this one on Marshall street, six years ago.

A. That is the one which I can testify about in a positive and unqualified way.

X Q. 149. You are a defendant in this suit?

A. Yes, sir; I am one of the members of the firm.

Redirect examination.

By Mr. HUNTER:

R. D. Q. 150. When the affidavits were prepared in opposition to the motion for a preliminary injunction in this cause, was it not a fact that what the defence relied upon was chiefly the non-infringement of the Busch device upon the Haughey patent?

297 A. So far as my understanding of the case was, that was the nature of it, because I remember saying to my attorney that I had no desire to injure Mr. Haughey or destroy the validity of his patent; that all I cared to substantiate was the fact that the device we were manufacturing was not an infringement.

R. D. Q. 151. The affidavit which you executed was prepared after consultation with yourself, was it not?

A. Yes, sir.

R. D. Q. 152. You read over that affidavit?

A. Yes, sir.

R. D. Q. 153. And the facts there alleged were and are all true; is not that so?

A. They are.

(Signed) LEWIS S. LEE.

Adjourned to Friday, March 21st, at 10 a. m.

298 HAUGHEY)
vs.
LEE *et al.*)

MEETING, *March 21st*, 1890.

Present: Mr. O'Brien and Mr. Bliss, for plaintiff; Mr. Hunter, for defendants; Mr. Shaw, the stenographer and special examiner.

JOSEPH BLANKLEY, sworn:

By Mr. HUNTER:

Q. 1. What is your name, age, residence, and occupation?

A. Joseph Blankley; fifty-five years of age; 747 South Seventeenth street; foreman for John Hunter, harness-maker.

Q. 2. How long have you been engaged in business as a harness-maker, either with John Hunter, or any other person?

A. About forty years.

Q. 3. Are you more or less acquainted with horse boots and devices used to prevent interfering?

A. I have made some few, and manufacture, and buy and sell them. I have handled a good many boots in my time.

Q. 4. Will you please explain more definitely what you mean by "some few"?

A. Well, we have not as big a boot business as some other people do; that is what I mean. There are parties who make a special business of boots and nothing else.

Q. 5. I now hand you a horse boot, and ask you whether you have ever seen the same, or a similar boot before.

299 A. Yes, sir; I used to make a good many of them.

(The horse boot identified by the witness is offered in evidence, and marked Respondents' Exhibit D.)

Q. 6. Where did you make these boots?

A. At Mr. Hunter's.

Q. 7. About how many of them would you say you have made?

A. I cannot tell that; that would be an impossibility.

Q. 8. Was it many, or few?

A. Well, we made them to order for anybody who came along. I suppose we might have made fifty; but I cannot positively swear to the quantity, because we have no record of them, and it has been a good while ago. They have gone out of the market, and I have not made one for some time.

Q. 9. When was it that you made these boots at John Hunter's place?

A. I do not suppose I had made any, until I made that one, for ten years.

Q. 10. Then it was prior to the year 1880, as nearly as you can recollect?

A. Yes, sir.

Q. 11. Have you ever seen one of these boots in use?

A. Yes, sir.

Q. 12. How was it placed upon the horse's leg?
A. Just buckled right round it above the fetlock joint.
Q. 13. With the projections extending inwardly?
A. Inwardly.
Q. 14. For what were those boots intended?
A. To keep the horse from interfering, and learning him to spread himself.
Q. 15. Has it been customary for you, in your business, to make different kinds of horse boots upon order?
300 A. Yes, sir; upon order.
Q. 16. Did the person ordering the boot furnish you with the pattern or style?
A. No, sir; we used our own judgment about that
Q. 17. Were boots similar to that marked Exhibit D all made for one person, or for different persons?
A. Different persons.
Q. 18. Were they made in the regular course of your business?
A. Regular course of business.

Cross-examined.

By Mr. O'Brien:

X Q. 19. You have stated that your employer does not make as many boots as other houses in this city, and that there are some who make a specialty of horse boots, I believe?
A. Yes, sir.
X Q. 20. What are the names of the houses that you can now enumerate that do that kind of work specially?
A. Gallagher, on Ninth street, makes a specialty of them, for one, that is, takes measurements; then there are wholesale houses, that I cannot name, in this city. I forget their names.
X Q. 21. Do you know that Thomas Morgan, on Arch street, makes a specialty of them?
A. I know that there is a Morgan, a bootmaker, but I do not know where his place is.
X Q. 22. How long have you known Mr. Gallagher, in that special department of manufacturing, known as horse boots?
A. Ever since he has been in business; I do not know how long that has been; fifteen or sixteen years, I suppose.
X Q. 23. The Gallagher you refer to, is Mr. Gallagher on Ninth street near Market?
301 A. Yes, sir; he makes a specialty of boots on order.
X Q. 24. This Exhibit D that you referred to in your direct testimony appears to have been just made?
A. Yes, sir.
X Q. 25. When was it made?
A. Made this morning.
X Q. 26. Who made it?
A. One of the men in the shop, under my direction.
X Q 27. And you say you made this from your recollection of what you had made, or seen made, ten years ago?

A. The last one I made ten years ago. I had made them ever since I was an apprentice.

X Q. 28. The last one you made was ten years ago?

A. Yes, sir; about that, I judge. I cannot recollect.

X Q. 29. And since that time you say they have gone almost entirely out of the market?

A. Yes, sir; out of use; I don't see many of them.

X Q. 30. This is the only kind of horse boot to stop interfering, having projections from the leg strap that you can recall, is it not?

A. Oh, no.

X Q. 31. What others do you know of?

A. There is one made in the Western country that projects, are made of rubber, but it is a different projection from that.

X Q. 32. But you never made those, I suppose?

A. No, sir.

X Q. 33. These are the only kind that you ever made?

302 A. Yes, sir.

X Q. 34. Are you acquainted with the Haughey dangled boot or pendant boot?

A. We have a dangled boot, but I do not know what the name is on it; I never took notice. It is not made that way (referring to Respondents' Exhibit B); it has got iron here. I do not know whether it is patented or not.

X Q. 35. Let me call your attention to what is known in this case as the complainant's patent, and ask you if that represents what you refer to as having been made in the West?

A. No, sir.

X Q. 36. Have you seen a boot, such as is pictured in the drawings of that patent you now hold in your hand?

A. I have seen this boot.

X Q. 37. You have seen the one with the balls, on the left-hand side?

A. Yes, sir.

X Q. 38. But not the picture on the right-hand side of the drawing?

A. No, sir.

X Q. 39. Where did you see the one with the balls on?

A. In the store, in the shop, and on horses.

X Q. 40. In your employer's store?

A. Yes, sir.

X Q. 41. You keep them in stock, do you?

A. Yes, sir.

X Q. 42. Do you know whether your employer purchases them?

A. I do not.

X Q. 43. Is that the first style of a pendant boot that you are familiar with?

A. Yes, sir; that is made in that way.

303 X Q. 44. And your acquaintance with that is limited to the last couple of years?

A. Well, there is a difference. This is not on that way. There is an iron here riveted on. That appears to be leather, and this

comes down. (Witness makes a sketch on paper.) The iron appears to be made that way, with a couple of rivets in there, and "patented" marked on that. I do not know whether there was anything else—whether there was any name on it or not.

X Q. 45. But it was similar in general appearance to the one on the right hand of the drawings of the patent you have been shown?

A. Same idea; same thing, only this.

X Q. 46. Same thing, excepting the chain, as indicated by the little drawing that you have made?

A. Yes, sir.

X Q. 47. And that appears to be a plate with the word "patented" on it and two rivets?

A. Yes, sir.

X Q. 48. I will ask you if you have seen used, or have made and used, a device like that which I now hand you. (Here the witness is shown Defendants' Exhibit C.)

A. No, sir; I never seen one before.

X Q. 49. Have you lived continuously in the city of Philadelphia for the last twenty years?

A. Yes, sir.

X Q. 50. And you have been engaged in the business of harness-making and the manufacture of devices for horses on orders and otherwise during all that time?

A. Yes, sir.

Redirect examination.

By Mr. HUNTER:

R. D. Q. 51. Was it the general custom, ten years ago or more, to keep different styles of horse boots in stock?

A. Not with our concern. We kept the regular line, and made to order what was not salcable, as a general thing. I do not know what the rest of them does.

304 R. D. Q. 52. In making these horse boots to order, would you follow the suggestions and desires of the persons ordering the boots?

A. Yes, sir, if they had any particular desire, but generally we do that; that is, as a general thing, I done it; but if they come in and insisted upon having a boot like that, of course it was our business to make it like any other one they would show you.

(Signed) JOSEPH BLANKLEY.

Adjourned to Saturday, March 22d, 1890, at 10 a. m.

305 HAUGHEY
vs.
LEE *et al.*

MEETING, *March 22d*, 1890.

Present: Mr. O'Brien and Mr. Hunter; Mr. Shaw, the stenographer and special examiner.

FRANCIS STEWART sworn.

By Mr. HUNTER:

Q. 1. What is your name, age, residence and occupation?

A. Francis Stewart; fifty-one; livery-stable keeper; residence, 1502 Juniper street.

Q. 2. Please state what experience you have had in connection with the care and management of horses.

A. I have been in business about twenty-five years, I suppose.

Q. 3. Have you been all of this time in the livery-stable business?

A. No, sir; I carried on a blacksmithing business before the war. I owned a horse always, and in 1868 I took charge of the Thirteenth and Fifteenth Streets road. I had from three hundred to six hundred heads under my charge all the time.

Q. 4. You are then more or less familiar with horse boots?

A. I am; yes. I have used some of them of different kinds.

Q. 5. Including those which are intended for curing or preventing the evil of interfering?

A. Well, they are all calculated for that purpose, everything in the boot line; that is the reason they are put on.

306 Q. 6. I now hand you a boot, which is entered as an exhibit in this case, and marked Defendants' Exhibit D, and ask you whether you have ever seen similar boots before?

A. Yes, sir; I think I have seen something of that kind. I think I got something of that kind made once in the railroad business.

Q. 7. Have you seen many of these used?

A. Well, now, I cannot say any more than in my experience and in business. I have used them on the railroads. Since I have been keeping a livery stable I have not used any boots of any account. Sometimes I have used a shin boot. I have seen them. I could not tell you what year it was in, but it was along from 1868 up to 1875; along there.

Q. 8. I understand you to mean that boots of this character were used upon the horses while you were connected with the Thirteenth and Fifteenth Streets car lines?

A. Yes, sir; something similar to that.

Q. 9. After a boot of this kind had been in use for some time, did the projecting portions maintain their lateral position?

(Objected to as incompetent.)

A. Not always.

Q. 10. Did they at any time hang down or depend?

(Objected to as leading and incompetent.)

A. I think when wet they would certainly sag. In wet weather, for instance.

Q. 11. Have you used the straw boot?

A. Yes, sir; in the railroad business I am speaking of now. I never used it in my own business—livery-stable business.

Q. 12. Have you ever used a boot made out of rubber hose or some other character of material as a substitute for the straw boot?

A. Yes, sir.

307 Q. 13. Will you describe briefly the character of that boot?

(Objected to as being incompetent and not sufficient foundation laid for the question.)

A. It is made in the same manner as that (Exhibit D). The hose comes round, the way I have always used it. Sometimes I have taken old hose, and other times I have bought lighter hose—I have tied it together, with the two ends standing out in the same manner as the old straw boot.

Q. 14. I now hand you a drawing, and ask you whether that correctly represents the boot which you have just described?

A. That is something like it. It was fetched round the leg and tied there (indicating) with a projection out the same as the straw boot. As I said before, you can make those longer or shorter, just as you feel like it.

Q. 15. And this was made of a piece of rubber hose?

A. Yes, sir.

Q. 16. After these devices had been in use for more or less time, did the projecting ends maintain their lateral projecting position?

A. That was all owing to the size of the hose. If the hose were heavy, it would not be apt to sag much; but if the hose were lighter, it certainly would sag the same as anything else.

Q. 17. The same as the projections in Exhibit D?

A. Yes, sir. Now, understand that the hose was cut out; there were two ends here (drawing), but if the hose were heavy, the same as is used in washing carriages, that would not bend much; but if it were light, it would.

Q. 18. Have you seen these devices with the projecting portion hanging down or depending?

(Objected to.)

A. I cannot say that I have. Of course, they would get down a little bit naturally; but, as I say, I never saw them hang in that kind of way. That is what I call hanging, you know (indicating on Exhibit D).

(The drawing identified by the witness is offered in evidence, and marked Defendants' Exhibit "Drawing of Stewart Device.")

308 Q. 19. Will you please tell me about how long it was that you used upon the horses of the Thirteenth and Fifteenth Street car lines these two boots, which you have identified, as shown in Exhibit D, and in this sketch which has been produced?

A. I took charge of the Thirteenth and Fifteenth Street road, I think, in 1868, and we used them off and on there that time until I left; different kinds; straw boots and these; and we endeavored not to use anything any more than we could help.

Cross-examined.

By Mr. O'BRIEN:

X Q. 20. When did you first see this drawing that has been shown you?

A. The first I saw of that was to-day.

X Q. 21. This morning?

A. Yes, sir.

X Q. 22. You did not draw it?

A. No, sir.

X Q. 23. Do you know how it came to be made?

A. Yes, sir. They asked me if I ever saw a boot of that kind made with rubber hose, and I told them yes.

X Q. 24. If I understand you correctly, these boots were picked up from pieces of hose around the stable and put on an interfering horse instead of the old straw boot?

A. Yes, sir; sometimes when they were too stiff I bought hose specially for them.

X Q. 25. But you never purchased one of them complete to put on a horse?

A. No, sir.

X Q. 26. You just bought the rubber hose yourself by tying it round with a string in the manner indicated in the drawing?

A. Yes, sir.

309 X Q. 27. You never knew it to be on the market as a horse boot?

A. I never did.

X Q. 28. It was a suggestion of the old straw boot?

A. Yes, sir.

X Q. 29. And a piece of old rubber hose offered a good substitute for that?

A. Yes, sir.

X Q. 30. And that is what you ordinarily used?

A. If we had not that we bought a piece.

X Q. 31. You have not used it in your own business?

A. No, sir.

X Q. 32. And you never have used it since you left the stable in 1875 or so?

A. I do not think I have.

X Q. 33. And your recollection is that it was generally the hose used around the stable, five-eighths-inch hose?

A. As a general thing, it was too large; it did not come around properly, and if we had no small hose, we generally bought a piece of hose something of that kind.

X Q. 34. It was merely experimental, or a makeshift at the best, was it not?

(Objected to.)

A. I found that it was much better than a straw boot, because it wore better.

X Q. 35. But that was practically the only difference?

A. It was to keep the horse from interfering. When his legs touched it, it just put them out like all other boots.

X Q. 36. The construction is like every other straw boot, only you used rubber instead of straw?

310 A. Yes, sir; tied the same.

X Q. 37. Tied with a piece of string?

A. Tied with a piece of string or strap.

X Q. 38. Can you recall the name of any harness-maker or boot-maker that made such a contrivance as you remember having used from 1868 to 1875, such as is exemplified in that strap there marked Exhibit D in front of you?

A. I cannot say positively, but I think that Heidrick made these.

X Q. 39. Up here at Fifteenth and Market?

A. Fifteenth and Locust.

X Q. 40. You mean the old man Heidrick?

A. I think his son is there now. It is Heidrick & Son, Fifteenth and Locust. I won't swear positively that I saw them there, but I think I have.

X Q. 41. But that has been a good many years ago?

A. Well, I have been in the livery business for eleven years, I think, and I have not used any of them since.

X Q. 42. Have you ever seen these rubber things like the straw boot used since you left the stable?

A. Yes, I think I have, but I won't say that positively.

X Q. 43. Can you recall any instance, or give the name of any person, you have seen it with?

A. No, I cannot.

X Q. 44. Can you say how many of them you used on your horses during that time?

A. No, sir, I cannot; that would be impossible.

X Q. 45. Was it a very hard thing upon a horse?

A. No; no harder than any other boot. In fact, we put rubber on because it was softer. It was not as hard on a horse as straw. Of course, that is all owing to how tight it is tied here (indicating).

311 X Q. 46. Are you acquainted with a boot in the market known as the pendant or dangled interfering boot?

A. I never used them, but I have seen them.

X Q. 47. When was it that you first saw them?

A. I could not tell you at all. I did not use them, and therefore I did not pay any attention to boots. I have not used any boots of any kind since I have been in the livery business. Once in a while when a horse interfered behind, I would put on a shin boot, a boot to keep them from——

X Q. 48. Chafing?

A. Yes, sir; chafing.

X Q. 49. In your direct examination you said that all horse boots were for interfering more or less?

A. That is what I always used them for.

X Q. 50. And they are commonly used for buffing, are they not?

A. How do you mean buffing?

X Q. 51. Well, a shin boot; for instance, when a horse strikes, the leather protects the animal's shin and legs?

A. That is what they are used for.

X Q. 52. That is the object, to prevent an abrasion by putting a protecting covering over them?

A. Yes, sir.

X Q. 53. That is what you understand to be the object of horse boots?

A. Yes, sir.

X Q. 54. No matter what shape or for what purposes they are used for?

A. That is what I have always used them for.

X Q. 55. In other words, you would ascertain where a horse struck, and you would put a projecting cover over that part?

312 A. I never put anything on without he needed it. Never have in my life.

X Q. 56. And when you put it on, you put it on for the purpose of protecting the horse?

A. Yes, sir.

X Q. 57. And that only?

A. Yes, sir.

X Q. 58. And that is the reason you used such a contrivance as is exhibited in this Exhibit D?

A. Yes, sir.

X Q. 59. That was the projecting to prevent the horse from striking and chafing itself?

A. Yes, sir; in traveling away; in other words, spreading.

X Q. 60. What part of the horse's foot was this device, Exhibit D, usually placed upon?

A. I generally put them above the fetlock joint.

X Q. 61. Have you known them to be put lower than the fetlock joint?

A. I could not say positively about this; but I think I have seen a rubber concern something similar that goes round below the fetlock; round the pastern; round here (indicating on foot).

X Q. 62. Similar to this, excepting that it had rubber spurs instead of leather spurs?

A. Yes, sir; I won't be positive, but I think I have. It had rubber spurs, and was rubber all through; but I never used them myself. I was opposed to that; I think it chafed the horse in bending the foot.

X Q. 63. That is the only way that is shown in that drawing that you have seen a rubber hose used for an interfering boot?

A. The only way I have ever used them was rubber hose.

313 X Q. 64. I now show you a construction that is marked in evidence in this case as "Defendants' Exhibit C, and ask you if you have ever seen a device of that kind used in this city before?

A. Not that I know of; I do not think I have. I might have seen it and paid no attention to it. As I told you before, boots are a thing I do not pay much attention to. I never used them more than I could help.

X Q. 65. Can you recall any more definite time that you ever saw a thing of that kind, that you hold in your hand, for stopping interfering horses in this city?

A. I could not say positively that I have.

X Q. 66. Have you ever used it yourself?

A. No; I do not think I ever did.

X Q. 67. I will ask you if you had these things, marked Exhibit D, made to order?

A. I think that I had my own man to make some of them at one time or one or two of them. I think that I had. I think that there were some of them there when I took charge of the place; but where they came from I cannot tell you; and I think I got one or two of them made afterwards. It has been so long since, and I did not pay much attention, and cannot say positively; but I know they were round there; and I think I got our own harness-maker to make something of that kind. I mean this (Exhibit D).

X Q. 68. You have never seen them since you left the stable?

A. No; I have never used any of them since (referring to Exhibit D).

X Q. 69. Have you seen them used since?

A. Not that I can remember. As I said before, I did not pay any attention to boots. I never used them only when I could not help it, and I endeavored to buy horses that would not want them. Still, sometimes you buy a green horse that interferes a bit, and all I use is a shin boot; but I do not believe in them myself. I usually keep my horses shod so that they won't interfere, and I won't buy them that will. I might have seen these boots on and not paid any attention to them. I could not tell you.

314 Redirect examination.

By Mr. HUNTER:

R. D. Q. 70. Did the Thirteenth and Fifteenth Street Car Company employ a harness-maker?

A. Yes, sir.

R. D. Q. 71. Did this harness-maker make horse boots whenever you required them?

A. Whenever I required them. Anything that I wanted made, I had made.

R. D. Q. 72. You have said that you used these rubber boots, such as are exhibited in the drawing, in place of the straw boot?

A. Yes, sir.

R. D. Q. 73. And that you found them more satisfactory than the straw boot?

A. My idea was that they did not chafe the leg so much as the straw boot.

R. D. Q. 74. Did you use these devices made out of rubber, as exhibited in the drawing, whenever they were needed, just as you used the straw boot, and in place of the straw boot?

A. Yes, sir; in place of the straw boot. Sometimes we used the straw boot, and sometimes them. If the straw boot would chafe, we would get something else.

R. D. Q. 75. They were no more of an experimental device than the straw boot?

A. No, sir; just the same.

R. D. Q. 76. And were more satisfactory than the straw boot?

A. There was not so much substance on the leg. It was more round and did not cover so much space. The straw boot we had to plait, you know, and put it round. That sometimes cuts the skin of a horse.

R. D. Q. 77. What was the object of the projecting part on these boots such as is shown in Exhibit D and the drawing?

A. To spread the horse; to keep the feet from getting together.

315 R. D. Q. 78. How did that accomplish this?

A. When the horse would strike it, he would get his feet out naturally.

R. D. Q. 79. That is, when the horse got his legs too close together, the projection would strike the leg?

A. Yes, sir; in place of the shoe striking the other side.

R. D. Q. 80. And cause him to remove it?

A. Yes, sir. In other words, make him spread and travel this way (indicating).

R. D. Q. 81. Did you use many or few of these boots?

A. We endeavored to use as few as we could. That is a question I cannot answer. Whenever we got horses that interfered—we would most generally try not to get interfering horses—but before they got acclimated, got working this way; before they got strong, we would use them on them.

R. D. Q. 82. Did you use as many as fifty?

A. I cannot answer that question. We used them whenever we wanted them; whenever it was necessary.

R. D. Q. 83. And not experimentally to try whether they would work?

A. No, sir; never no experiment.

Recross-examined.

By Mr. O'Brien:

R. X Q. 84. This drawing here, showing the rubber hose without it surrounding the horse's leg, represents all that there was to this device of which you testify as having used in the Thirteenth and Fifteenth Streets stables when you were there?

A. That is about all; yes, sir.

R. X Q. 85. Now, I will ask you if the manifest effect of that construction, when placed upon a horse's leg, and being struck by the projection on the opposite leg, to which the strap was attached, or the hose was attached, would be to turn it round either in front or in the rear of the horse's leg?

316 A. Not if it is tied properly on the flat of the leg. The horse's leg is flat, the same as my arm. You see, my arm is flat. This was fetched round and tied properly there on the front of the leg. If it is not tied properly, or tight enough that it won't turn, it will turn round by striking; but if it is tied round properly in the front, why, it will not turn, because it forms a thing like that (indicating a loop). You see this (drawing) cannot turn. As I said before, the horse's leg is flat when a proper shape, therefore, when you fetch it up and tie it here, it cannot turn, because there are two sharp corners to it.

R. X Q. 86. As matter of fact, would not the best of tying result in a very short time in loosening the part of the jointure enough to have it twisted around by a blow of the horse?

A. No, sir; not if it was properly put on. If it did, the projection would not be of any use; so therefore you would not use them if they did not answer the purpose.

R. X Q. 87. Assuming that a man should put that on a horse's leg, and not tie it so as to prevent it from turning round, it would be useless for the purposes of preventing interfering?

A. Yes, sir; as a general thing, it would.

R. X Q. 88. And that would be the result that would happen unless a man was very careful about how he tied it on?

A. Yes, sir.

R. X Q. 89. And even though he did tie it on correctly, it would require an adjustment frequently, would it not?

A. I do not think it would.

R. X Q. 90. Otherwise, do you not think it would interfere with the circulation of the blood in the horse's leg?

A. No, sir. As I said before, the majority of horses' legs are flat there, and it makes sharp turns here, so that you cannot push it round when it is tied properly. There are some horses whose legs are round. They will be apt to turn on them; but, as I said before, a well-shaped horse is that shape (indicating drawing).

R. X Q. 91. If you put it on a horse's leg which was round, it would be useless?

317 A. It would not answer the same purpose; when you had the hose on which I had, so that it would project out, and then put a strap on, why, then it would answer the same purpose as the other.

R. X Q. 92. In other words, it would make a buffer big enough to answer the purpose?

A. Yes, sir; that is the idea.

R. X Q. 93. Have you ever known them to fall off the horse?

A. I do not remember about that. They might have come untied, but I do not remember.

R. X Q. 94. It was a makeshift device, anyhow, done in the stable?

(Objected to as having already been answered by the witness as most positively not the case. A protest is made against putting into the mouth of the witness words which he has most positively refused to accept.)

A. We used it in place of the straw boots, as I told you before.

R. X Q. 95. In other words, what I mean to have you answer is, that if a rubber hose was not convenient, you would use a w*h*isp of straw?

A. Yes, sir.

R. X Q. 96. And if the rubber was convenient, you would use that in preference to the straw?

A. I bought hose on purpose for that, or had it bought, rather.

R. X Q. 97. You did that every time you wanted a piece of hose, did you not?

A. We did not use much hose in our place, only for that kind of purpose. Sometimes we did for washing cars.

R. X Q. 98. I understand you to say that you were using that Exhibit D, which has that leather arrangement there with the projecting loops, at the same time you were using this hose on your horses that belonged to the car company?

A. I cannot tell you that, whether it was at the same time, or might be a month afterwards, or two months, or might be three. I cannot tell you whether it was the same time or not.

318 R. X Q. 99. Did you prefer Exhibit D, or the hose rubber, as shown in that picture?

A. On some horses we used this, and on some others this.

R. X Q. 100. Why did you make this distinction?

A. Why, as I stated before, some horses had round legs. This one went all around (Exhibit D) all but the buckle.

R. X Q. 101. So that the hose would not operate on some horses, and then you used Exhibit D; is that what you mean?

A. I explained to you that on a round leg this hose turned round. You know some horses have round legs, as I said before, and then it is a hard matter to get them stationary.

R. X Q. 102. You mean to keep the rubber hose on his leg stationary?

A. Yes, sir; but if a horse has a leg like this, it is not so much trouble; but this we used to have all the time, with the buckle here, and then if they did turn round, it would be the same thing all the way round.

R. X Q. 103. You said that this Exhibit D, if it got wet, might get flabby and hang down, I believe?

A. Yes, sir.

R. X Q. 104. Would this drawing do the same thing?

A. That depends upon the size of your hose. If the hose was light, and got wet, it might hang a little; but five-eighths hose, or even one-half-inch hose I do not think would.

R. X Q. 105. Wet weather would not have any effect on hose?

A. Well, it is all how the horse would travel. That would have some effect on it; how close he would travel.

R. X 106. You never intended to have them hang down when you put them on?

A. No, sir; we never did.

R. X Q. 107. Your intention was that should stick out?

A. Yes, sir; same as the straw boot.

319 Redirect examination.

By Mr. HUNTER:

R. D. Q. 108. Whether this rubber projection hung down or not would depend upon the length of time the device was used, and the weather, would it not?

A. I suppose it would to a certain extent. The weather would not have much to do with the hose. It would be the length of time they would be used. Water don't have much effect on rubber hose.

R. D. Q. 109. When you simply tied a piece of rubber round the horse's leg without a projection, as you have testified, and used it as a buffer, it was immaterial whether it turned round the horse's leg or not?

A. It was immaterial; that is it.

R. D. Q. 110. Do I understand that you would use this rubber device with the projection to prevent interfering whenever the horse's leg was suited to it, but that in round-legged horses you would use other devices, such as that shown in Exhibit D?

A. Yes, sir. When we found they would not work, and the horse interfered and turned them round, we put this on.

R. D. Q. 111. Then you preferred the rubber device?

A. No; I cannot say that I did. I did not say that. This Exhibit D sometimes chafed the horse; it depended upon the horse. Sometimes, you see, if it is put on middling tight, it hurts the skin.

(Signed) FRANCIS STEWART.

Adjourned to Monday, March 24th, at 10 a. m.

320 HAUGHEY *vs.* LEE *et al.*

MEETING, *March 24th*, 1890.

Present: Mr. O'Brien and Mr. Bliss, for plaintiff; Mr. Hunter, for defendants; Mr. Shaw, special examiner.

RUDOLPH M. HUNTER sworn.

By Mr. HUNTER:

Q. 1. What is your name, age, residence, and occupation?

A. Rudolph M. Hunter; age, thirty-three years; residence, Philadelphia, Pennsylvania, and by occupation, I am a mechanical engineer and solicitor of patents.

Q. 2. Please state what experience you have had in the preparation and reading of patents, and also state your qualifications in the mechanical art.

A. I am professionally educated as an engineer, and am familiar with mechanical arts. I have designed and constructed machinery and devices of various kinds, and am thoroughly familiar with mechanical principles and mechanism, and with draugh-ing in all of its branches. I have been engaged in patent business since 1871, and during the interval from that to the present I have prepared and prosecuted large numbers of applications for patents, and for twelve years past I have frequently been called upon each year to give expert testimony in suits involving the infringement of patents, and for some years past I have given particular attention to this branch of my profession.

Q. 3. Have you examined, and do you understand letters patent of the United States to Michael Haughey for an improvement in interfering device for horses, No. 379,644, dated March 20th, 1888, the patent in suit entered as an exhibit in this cause, and marked Complainant's Patent?

A. I have examined the letters patent referred to in the question, and believe that I fully understand the alleged invention therein set out and claimed.

321 Q. 4. Have you examined the testimony of the witnesses in this cause, and the exhibits adduced in evidence, and do you understand the same?

A. I have examined the evidence taken in this case referred to in the question, and am of the opinion that I fully understand the same.

Q. 5. I now call your attention to the exhibits marked respectively Complainant's Exhibit Defendants' Device, and Complainant's Exhibit Defendants' Device B, the alleged infringing devices in this cause, and ask you to state whether you find the invention disclosed and claimed in the letters patent, No. 379,644, the complainant's patent in suit, embodied in those devices, giving whatever reasons you may desire for your answers, and referring, if you wish, to the previous state of the art, and referring also to the apparatus exhibited in the sketch, which I now produce.

(This sketch produced is offered in evidence, and marked Respondents' Exhibit Drawing of Gilbert Device.)

(The drawing handed to the witness is objected to as not being identified in evidence as the devise which it purports to represent.)

A. I have made the comparison required, and am of the opinion that the invention, if any exist, in the complainant's patent in suit is not embodied in the devices or structure marked Complainant's Exhibit Defendants' Device, and Complainant's Exhibit Defendants' Device B. My reasons for this opinion may be stated as follows: First, referring to the complainant's patent in suit, and considering it *per se* or without reference to the prior art, I find therein disclosed a structure or device for preventing interference between the legs of a horse, which consists of a strap of any suitable construction

adapted to encircle the leg of a horse at any point or place where the interference is found to take place, and to this strap is connected a pendant which may be made of rubber, wood, or other suitable material, and said pendant is to be "loosely jointed" to the strap which passes around the leg of the horse. No novelty whatever is alleged in the construction of the strap, and no novelty is claimed for the particular construction of the pendant itself, for, after describing the construction of pendant illustrated in *in* figure 1 of the drawing, wherein a series of balls of rubber or other material are threaded upon a stem of leather or rawhide, the patent states "This form, however, is not essential, as the pendant may be made in one piece, loosely fastened at the top." The claim of the patent combines the pendant with a strap, which encircles the horse's leg, and states that these two parts are connected by a loose joint, the language being "the interfering device consisting of the pendant made of rubber, wood, or other suitable material, loosely jointed to the strap passing around the leg of a horse, substantially in the manner
322 shown, and for the purposes set forth." It will thus be seen that whatever novelty exists in the device disclosed in the patent, it must be in the loosely jointed connection between the pendant and the strap, and as stated in the claim, this construction must be made "substantially in the manner shown, and for the purposes set forth." Referring back to the patent, I find the construction whereby the pendant is connected to the strap described as follows: "The upper end of the stem b^5 is lapped around the ring b^3 and fastened, and the whole is loosely attached to the strap A by a strip, b^4 passing around the ring b^3, and fastened to the strap A by the rivet c^1." This construction, which I have just quoted, is that which is clearly shown in figure 1.

(Complainant's counsel objects to the witness' line of evidence concerning the construction of the complainant's patent, in so far as the same undertakes to construe the language thereof, and asks that the same be stricken out.)

WITNESS (continuing): In the preamble of the specification, I find the following language: "The object of my improvement is, first, to provide against a horse striking or interfering, by means of a pendant that will move and swing freely between his legs from a loose joint at one or more points of attachment to a strap fastened around his legs. * * * I attain these objects by the mechanism illustrated in the accompanying drawing." While the preamble refers to the connection of the pendant by a loose joint at "one or more" points with the strap, no construction of any kind is shown in which more than one such joint is made with the strap, said joint being between the ring b^3 and the strip marked b^4. That this construction of a single joint is that which is to be understood from the complainant's patent, is clearly demonstrated by the drawing of the patent itself, and the interfering devices made by the complainant, one of which is marked Complainant's Exhibit Complainant's Device, and contains upon it the date of complainant's patent in suit. While the pendant is to have but one point of connection

with the strap, it must also have in that connection provision whereby the pendant may swing freely in all directions; that is to say, both in the plane of travel of the horse as well as transversely thereto, and in addition to this, the pendant shall be capable of assuming every intermediate position, so that in effect the connection is a universal joint. In the structure as made by the complainant under the Haughey patent in suit, the parts b^3 and b^4 of the patent are constructed as of one piece of metal secured to the strap, the lower portion of which is made with a curved bar corresponding to the lower portion of the ring b^3, and to which the pendant is attached substantially in the manner set out in the patent. It will be observed by an examination of this complainant's device that the pendant is free to swing in every conceivable direction, including almost the space bounded by a semi-sphere. One of the essentials of the complainant's device, as disclosed in the patent, in the actual structure made by the complainant under said patent is, that the pendant shall be loosely jointed by a loop formed on the pendant *per se*, which shall pass about a downwardly projecting curved
323 loop of metal connected to the strap which encircles the horse's leg, the curvature of which loop allowing the pendant to swing freely in the direction of travel of the horse, while the loose loop of the pendant permits the free movement of said pendant in a transverse direction, and the two combined permit the resulting movements as before stated. By this loose joint, as shown in the patent and as embodied in the complainant's device, the pendant is permitted to strike the leg upon which the interfering device is secured, as well as the opposite leg of the horse. This is the function of the pendant when connected by the loose joint of the complainant's patent, as will appear from the testimony of the complainant himself, found upon page 13 of the complainant's record, the question and answer to which I refer, being as follows:

"30 Cross-int. Then the only function which it has in being made a pendant over what it would have when it was not pendant, is that it strikes the leg to which it is attached in addition to the opposite leg?

"A. Exactly."

Also, from the testimony of the complainant's expert, Mr. Pickles, found upon page 23 of complainant's record, which reads as follows:

"47 Cross-int. Then, as I understand it, the only difference is that the loosely jointed pendant allows a striking of the leg to which the device is attached as well as the other leg. Is this correct?

"A. That is correct."

(Complainant's counsel objects to the language of the witness wherein the same is used as argument in comments upon facts in evidence, and the deductions of the witness resulting from his conclusions in regard to the same, and because such are incompetent.)

WITNESS (continuing): While the structure marked Complainant's Exhibit Complainant's Device differs slightly from the struct-

ure illustrated in the complainant's patent in suit, yet it is made "substantially in the manner shown," for we have so much of the loose joint between the pendant and the strap, as is illustrated in the complainant's patent as will enable the peculiar movement required of the pendant to take place; that is to say, whereby the pendant shall strike the leg to which the interfering device is attached, as well as the opposite leg. In my judgment, the device marked Complainant's Device discloses a structure which is fairly within the language of the patent in suit, and as particularly pointed out in the claim; but, if we eliminate the loose joint found in the curved bar, and the loop of the pendant, we will not, in my opinion, embody the structure illustrated, described in claim in the complainant's patent in suit. If my understanding of the invention of the complainant's patent in suit is correct, and
324 is a proper legal construction to be given to the claim, then the defendants' devices, as illustrated in Complainant's Exhibit Defendants' Device, and Complainant's Exhibit Defendants' Device B, do not, in my opinion, embody the structure set out and claimed in the complainant's patent in suit. These devices of the defendants consist essentially of a strap which passes about the leg of a horse, and having a portion thereof between the ends formed into a projecting loop, upon which is placed a series of rubber balls, the object being to cause the said balls and the supporting loop to project laterally, and at substantially right angles from the leg of the horse while in motion, and adapted to strike the opposite leg to which the interfering device is secured. The movements of the projecting in this case is at right angles to the travel of the horse, and in a substantially horizontal plane, and the construction is such that under no normal operation of the device when in proper condition could the projection strike the leg of the horse to which the interfering device is secured. That portion of the strap at the inner end of the balls is united by a piece of leather, so as to make the projection a positive structure adapted to extend laterally, and at all times away from the leg to which it is attached. The two devices marked Defendants' Device and Defendants' Device B are substantially the same in general construction that I would remark that in the defendants' device B, which is the more preferable construction, the inner end of the projection is provided with a semi-ball, the flat surface of which is kept against the leather, and assists more perfectly in holding the projection, or striking part, at right angles from the horse's leg. These exhibits representing the defendants' device have been handled considerably, and, as the strap is made of rawhide and capable of being, by constant handling, more or less loosened and lengthened, it will be seen that in the case of "defendants' device" the projecting portion of the strap has been so far stretched as to make the connection adjacent to the leather appear to be more or less flexible. If the balls, however, were moved back into their normal positions, so that the inner ball comes against the leather as it should, and does in the actual devices as made and placed upon the market, it will be seen that the projection extends substantially at right angles from the

strap, and from the leg of the horse to which the strap is secured. In my judgment this exhibit has had the projecting portion of the strap stretched to such an extent as to render the device defective and inconsistent with the object of the interfering devices as may be placed upon the market by the defendants.

(Objected to as incompetent and irrelevant and not being founded upon any fact in evidence.)

WITNESS (continuing): Even in the present defective condition of the interfering device, and with the balls all pulled out toward the end, so as to load down the projection at its free end, the said projection is not disposed to hang down to such an extent as to strike the leg to which the interfering device is attached. I would particularly call attention to the defective condition of this exhibit introduced by the complainant because, in my opinion, it is apt to mislead a person examining it as to the real and true construction and operation of the interfering devices as actually made by the defendants.

325 (Counsel for complainant objects to the assumption by the witness, and his repeated statements that the devices referred to are defective and not in their normal condition. There is no evidence to warrant such assumption or statement; on the contrary, the exhibits referred to have been proven to be manufactured and sold by the defendants, and there has been no testimony as to any alteration in their condition since they left defendants' hands. The witness has further testified with regard to the proper and normal condition of the devices as put upon the market by the defendants without showing that he has any knowledge whatever upon the subject.)

WITNESS (continuing): One of the most glaring defects in Complainant's Exhibit Defendants' Device, with reference to the actual structure as placed upon the market by the defendants, is that the projecting portion of the strap has not only been lengthened by constant handling, but the padding material, which normally holds the strap where it comes through the opening in the leather well back, has been entirely removed, and there is nothing to prevent the looseness of the strap at this point. I am familiar with the interfering devices as placed upon the market by the defendants, and am satisfied that the "Complainant's Exhibit Defendants' Device," in the condition in which it now appears, does not correctly represent the interfering devices as placed upon the market. As a fair illustration of the actual structures as placed upon the market, I produce one of their interfering devices which does not differ materially from the general make of the interfering devices which are supposed to have the same construction, and which were sold by the complainant.

(The device produced by the witness is offered in evidence, and marked Respondents' Exhibit Respondents' Sample of Respondents' Device.)

(Counsel for complainant objects to the exhibit offered, and to

the testimony of the expert witness with regard to it, because it does not appear that the witness testifies of his own knowledge as to the character of any devices actually put upon the market by the defendants, or that he has any business relations with the defendants, or that he is engaged in the manufacture or sale of horse boots so as to have any knowledge as to what devices are actually on the market, and because it is irrelevant in this proceeding that the defendants did actually sell some other device which may or may not infringe the complainant's patent.)

WITNESS (continuing): It will therefore appear that if my understanding of the language of the complainant's patent suit is correct, and the proper legal construction to be given to the com-
326 plainant's patent, then for the reasons already stated upon the record, the defendants' interfering devices as shown in the complainant's exhibits do not embody a pendant "loosely jointed" to the strap which passes around the leg of the horse, and certainly not a structure in which the projecting device is connected to the strap "substantially in the manner shown" in the complainant's patent in suit, as would be required to come within the terms of the claim of said patent. My reasons for believing that the legal construction to be given to the patent shall be as I have stated, whereby the devices as claimed in said patent, shall be limited to the structure which I have pointed out, is that the prior art would necessarily prohibit any other construction, in my opinion, being given to the claim Aside from the various prior uses testified to by various witnesses in behalf of the defendants, there are a number of patents for interfering devices which clearly show that the idea of securing a flexible projection to a strap which encircles the leg of the horse, was well known long prior to the date of the complainant's patent in suit. Prior to referring to the public uses testified to by the defendants' witnesses, I will briefly refer to some of the prior patents. Patent No. 220,585, dated October 14th, 1879, was issued to C. P. Dickinson for an interfering strap. This device consisted essentially of a strap which encircled the leg of the horse, and was provided with a buckle for properly securing it in place. Upon the outer surface of the strap were secured a series of flexible loops, the longer of which come upon that portion of the strap adjacent to the leg which it is designed shall be struck by the interfering device. With reference to these loops, the patent states:

"The loops are soft and yielding, and, when struck by the horse's foot or leg, cause him to spread his gait, and, being soft and pliable, cannot injure the leg, upon which it is fastened, or the one striking it, as is now the case with interfering straps or boots now in use."

On the inside of the strap which encircles the leg small projections are placed, designed to allow free circulation of the air and passage of dirt between the strap and the leg of the horse. As an illustration of this Dickinson interfering device, I produce a full-sized sample, and would remark that the small projections marked C in the patent, upon the inner surface of the strap, have been

omitted, as they are unimportant so far as the question at issue is concerned. Their omission was unintentional; but it is unimportant whether they are present or not, so far as any bearing which this device might have upon the patent in suit.

(The device produced is offered in evidence, and marked Respondents' Exhibit Dickinson Interfering Strap, omitting internal projection C.)

(Counsel for complainant objects to the exhibit offered, as being incompetent, irrelevant and not properly identified.)

WITNESS (continuing): I produce another strap, similar to the Dickinson device last produced, with the exception that in
327 place of the series of loops, I have but a single loop, equivalent to the exhibit just offered in evidence, with all but one of the loops cut away. An examination of this device will show that it consists of a strap adapted to encircle a horse, and provided with a lateral projection, or striker, made in the form of a loop, and "soft and yielding." The Dickinson interfering strap embodies all that this device embodies, and contains, in addition thereto, a series of additional loops.

(The device produced by the witness is offered in evidence, and marked Respondents' Exhibit Hunter Illustrative Device No. 1.)

(Objection by complainant's counsel to said device, for the reason that the same is an arbitrary and unauthorized mutilation of the Dickinson device referred to, and rests in no authority under the pleadings or evidence in this case.)

WITNESS (continuing): From this patent, it will be seen that an interfering device consisting of a strap provided with a projecting striker formed of flexible material, and flexibly connected with respect to the strap which encircles the horse's leg, was well known.

(The Dickinson patent referred to by the witness in evidence, is offered in evidence, and marked Dickinson, 1879, Patent.)

WITNESS (continuing): Letters patent No. 61655, dated January 29th, 1867, was issued to J. Davy, for a horse boot, in which a strap provided with a buckle was adapted to encircle the leg of the horse, and from the outer surface of said strap projected bristles which formed lateral projections, projecting parts formed of flexible material. A sample of such a boot as set out in the Davy patent is produced.

(The patent referred to by the witness *as* offered in evidence, and marked Respondents' Exhibit Davy, 1867, Patent, and the device produced is also offered in evidence, and marked Respondents' Exhibit Davy Boot.)

WITNESS (continuing): Letters patent No. 250,771, dated December 13th, 1881, was issued to J. Young, Jr., for a horse boot, in which a construction was employed very similar in general feature to that set out in the Davy patent. Specifically considered, this boot consisted of a strap of leather provided with buckles for encircling the

horse's leg, and to which was secured tarred rope or marline, from which projects manilla of fibrous material. It will thus be seen that we have here an interfering device in which, from a strap encircling the horse's leg, there are flexible projecting portions.

(The patent produced by the witness is offered in evidence, Respondents' Exhibit Young, 1881, Patent.)

328 WITNESS (continuing): Letters patent, No. 81998, dated September 8th, 1868, was issued to Hall & Clifford, for horse boots, in which an inner band of felt, or its equivalent, is combined with a rubber "anti-interfering band, for horses' legs." This strap encircles the horse's leg, and is provided with a buckle for securing it, and also is furnished with a series of projections upon its outer surface, formed of flexible material, since they are composed of rubber.

(The patent produced by the witness is offered in evidence, and marked Respondents' Exhibit Hall & Clifford, 1868, Patent.)

WITNESS (continuing): Letters patent, No. 77728, dated May 12th, 1868, was granted to H. A. Hall, for horse boots, in which a band of leather, or other suitable material provided with a buckle, was employed to encircle the leg of the horse, and was provided with a series of elastic points or projections made of India rubber, or its equivalent, and these projections are adapted to strike the opposite leg to the one on which the boot is placed. With reference to these projections, the patent states:

"Each projection or feeler is to be made so as to be substantially as flexible in a vertical or oblique as it is in a horizontal direction, it having for this purpose a vertical cross-section. This it can play freely in any direction in which, when in use, it may be likely to be moved by contact with the leg of the horse."

It will thus be seen that in this patent we have a full disclosure of an interfering device in which there is a strap encircling the horse's leg, to which is secured, by a flexible connection, a projection which shall be movable in a vertical direction as freely as in a horizontal direction. The construction is one which, while differing from the device of the complainant's patent in suit, in the kind of joint between the projection and strap, yet, nevertheless, shows a construction in which the projection or striker is connected to the strap by a flexible joint.

(The patent last produced and referred to by the witness is offered in evidence, and marked Respondents' Exhibit Hall, 1868, Patent.)

WITNESS (continuing): Letters patent, No. 160,248, dated February 23d, 1875, was granted to A. D. Westbrook, for interfering boots for horses, and shows a construction in which a strap of rubber was employed for encircling the leg of a horse, and from the outer surface of which strap projected a series of flexible projections or points.

(The patent last produced by the witness is offered in evidence, and marked Respondents' Exhibit Westbrook, 1875, Patent.)

WITNESS (continuing): Aside from these patents showing lateral projections from a strap which encircles the horse's leg, I
329 would refer to the patent to Brinkerhoff for horse boots, No. 85205, dated December 22d, 1868, in which the use of rubber balls are shown, which rubber balls are similar in all material respects with those employed both upon the complainant's device and defendants' device, and also as shown upon the pendant in the complainant's patent in suit.

(The patent last referred to by the witness is offered in evidence and marked Brinkerhoff, 1868, Patent.)

WITNESS (continuing): I notice that the complainant's expert, Mr. Pickles, places a construction upon the words "loosely jointed," found in the claim of the complainant's patent in suit, which would not only include the loosely jointed construction "substantially in the manner shown," but also any of the flexible connections which are shown in these various exhibit patents, to which I have referred as exhibiting a prior state of the art with reference to patented devices. That portion of his testimony to which I particularly refer, is as follows;

"60 Cross-int. Is it not essential in order to join things together, or to form a loose joint between two parts, that they shall be separated from one another?

"A. Not necessarily.

"61 Int. Can you give an example of such a loose joint?

"A. Rubber is treated in that way; where it is one continuous piece, one portion of which would be flexible, and the balance would be rigid.

"62 Cross-int. Do you understand, then, that loosely jointed and flexible are the same?

"A. Identically the same in this case."

From this testimony of Mr. Pickles I understand that he considers any construction, wherein the projection, or so-called pendant, is connected to the strap which encircles the leg by a flexible joint, or one in which the projection is formed of elastic material, whereby it has flexibility as being within the terms of the claim of the complainant's patent in suit, if his construction of the claim is correct, then the device set out and claimed in the Haughey patent in suit would be fully anticipated by any one of the exhibit patents showing the projections made of rubber or flexible material, and particularly by the structure set out in the Respondents' Exhibit Hall, 1868, Patent, wherein the flexibility of the projections, with reference to the strap, is clearly described for the purpose of enabling such projection to "play freely in any direction."

330 (Counsel for complainant objects to the answer of the witness, and calls his attention to the fact that the complainant does not claim a "loose joint" or a "flexible joint," but a pendant loosely jointed to the strap passing around the leg of a horse.

(Counsel for respondents calls the attention of counsel for complainant to the fact that the witness is now testifying as to his understanding of the complainant's patent in suit, and if there is any difference of opinion as to whether that understanding is correct, it should be properly reserved for argument in proper place, or for cross-examination at the proper time, and not by means of argumentative interpolation upon the record. The letters patent in suit speak for themselves as to what the complainant claims or does not claim.)

WITNESS (continuing): The defendants' devices have no loose joint, such as shown in complainant's patent, nor any loose joint formed by linking two parts together; but, for the purpose of including the defendants' device within the terms of the complainant's patent in suit, the complainant's expert, Pickles, assumes that the words "loosely jointed" and "flexible" are identical in meaning, and are included in the terms of the complainant's patent in suit, and, in giving this construction to the claim, he was well aware, no doubt, that without it he could not have found in the defendants' device the structure set out and claimed in the complainant's patent in suit. That this is so is evident by examining the defendants' device, from which it will be seen that the projection, which he erroneously terms a pendant, is connected to the strap by a portion of the continuous strap. If we assume that the defective exhibits of the complainant illustrating, as it is alleged, the structures of the defendants as placed on the market, are correct, then, at best, the defendants' device employs a "flexible" connection between the projection and strap, and not a "loosely jointed" connection, as is required by the language of the complainant's patent in suit. If the complainant's patent, therefore, is to have a legal construction placed upon it, which would include a flexible connection between the projecting or pendant and the strap, then said complainant's patent would be for what is fully disclosed in the prior art.

(Objected to because nothing has been disclosed in the prior art, which shows a pendant device connected to the leg strap by either a "loosely jointed" or a "flexible" connection.)

(Respondents' counsel must again object to counsel arguing the case upon the record.)

WITNESS (continuing): For the reasons already stated by me, it is impossible, in my opinion, to give to the complainant's patent in suit a legal construction which would include a flexible con-
331 nection between the projection and the strap, and for this reason the complainant's patent in suit would be limited to the particular structure of joints which is not employed in the defendants' interfering devices. I notice that complainant's expert, Pickles, in answer to cross-interrogatory 51, stated that if we removed the balls from the end of the strap which is looped upon itself to form the projection, such as found in the defendants' de-

vices, that the loose joint would still exist in that portion of the projecting or looped portion adjacent to the strap.

(Complainant's counsel objects to witness selecting the evidence of the complainant's business isolating and disconnecting interrogatories, and criticising the same in a manner unwarranted by the body of the examination to which his criticisms *occur*.)

WITNESS (continuing): As an example of this loose joint alleged by Mr. Pickles, and as he applies it to the defendants' device, I produce one of the defendants' devices, similar in all material respects, as was the Complainant's Exhibit Defendants' Device when ordinarily placed upon the market, and from which I have removed the balls, leaving the looped end of the strap in its normal position. As the complainant is not limited to any particular kind of pendant, and might employ a strap looped upon itself without the balls, so far as the claim of the patent in suit is concerned, it will be seen that this device, which I have produced, must be as clearly within the terms of the claim of the complainant's patent in suit as it would be if the balls were replaced upon the projection. If we compare this device, which I have just produced, with the structure set out in the Dickinson patent, and as disclosed in Respondents' Exhibit Dickinson Interfering Strap, omitting internal projection C, and Respondents' Exhibit Hunter Illustrative Device, No. 1, it will be apparent that in this device which I have produced, we will have, broadly considered, substantially what is set out in the exhibits at this prior patent, the said Dickinson interfering device being formed essentially of a strap for encircling the horse's leg, and provided with projections formed of loops having all the flexibility with reference to their connection with the strap that is found in the defendants' device.

(The device produced by the witness is offered in evidence and marked Respondents' Exhibit Respondents' Device with Balls Removed, and respondents' counsel also offers in evidence the balls removed from the said device, and the same are marked Respondents' Exhibit Balls Removed from Respondents' Device.)

(Complainant's counsel objects to the answer of the witness, in connecting the Dickinson device with the exhibit, as being unfounded in the evidence and an attempt to manufacture proof.)

WITNESS (continuing:) I will now refer to the various exhibits illustrating the prior uses as testified to by the defendants' witnesses, and compare them with the devices set out and claimed in the complainant's patent in suit. Exhibit D of the de-
332 feadants' exhibits shows a construction of interfering device very similar to the device set out in the Dickinson patent to which I have before referred, but in this case there are no internal projections, such as are marked "C" in the Dickinson patent. All that I have stated with reference to the Dickinson patent equally applies to this exhibit. Referring now to Defendants' Exhibit Stewart Drawing, I will say that that drawing was made by me from an explanation given by Mr. Francis Stewart.

(Counsel for complainant objects to any reference, or allusion being made to any explanation alleged to have been made by Stewart to the witness, unless the same is the explanation made by Stewart in his testimony.)

WITNESS (continuing): In the device illustrated in this drawing we have a flexible or elastic strap encircling the leg of a horse, formed by a piece of hose, and having the two ends of the hose arranged to project from the leg upon which the device is placed toward the opposite leg, the said construction being produced by tying the hose together in the form of a loop at some distance from the ends thereof. In this construction we have a flexible projection, adapted to strike the leg of the horse, and flexibly connected with the encircling portion corresponding to the strap. The complainant did not invent the encircling strap with the buckle, nor did he invent the projection which strikes the leg of the horse, and if the words "loosely jointed" are to be construed broader than what is shown in the complainant's patent, and as assumed by Mr. Pickles, the complainant's expert, then the device as claimed in the complainant's patent in suit would be fully embodied in this prior device, illustrated in the Defendants' Exhibit Stewart Drawing. For this reason it is also clear that the complainant's patents cannot be made to include a flexible joint, such as is embodied in the defendants' device.

Referring now to Respondents' Exhibit A, I find that it consists of a strap adapted to encircle the horse's leg, and to which strap is connected by a loose joint a pendant formed of a chain. In this structure we have an interfering device consisting of the pendant, made of suitable material, loosely jointed to the strap passing around the leg of the horse, and clearly disclosing a loose joint, having all the advantages and defects of the construction set out, and claimed in the complainant's patent in suit. While the structure of the pendant differs from the pendant of the complainant's patent in suit, yet it is distinctly stated in the patent that the form of the pendant shown is not essential. If the complainant's patent is to be limited so as to escape anticipation by this device, it will certainly have such limitations that under no circumstances could the structure set out and claimed in said patent be embodied in the defendants' interfering device.

I produce an interfering device very similar to Respondents' Exhibit A, and which is, according to my understanding, similar
333 to the device which was testified to by Mr. Thomas Miller as having been used for horses that kicked. He testifies that the chains were generally made of different lengths, from eight to fifteen inches long. This device differs from Respondents' Exhibit A only in the length of the chain, and this difference would certainly not be a patentable difference, and consequently I consider these two devices as identical, and all that I have said with reference to Respondents' Exhibit A equally applies to the device testified to by Mr. Miller, and as illustrated in the interfering device which I have produced.

(The device produced by the witness is offered in evidence and marked Respondents' Exhibit E.)

(Objected to as incompetent.)

WITNESS (continuing): Referring now to Defendants' Exhibit B, I find that it consists of a strap, provided with a buckle, adapted to be secured around the leg of a horse, and to this strap is connected a pendant, the connection being by a loose joint between the pendant and strap, and formed by doubling the rope, upon which the balls and pendant are strung upon itself, and uniting its free end to the body of the pendant immediately below the strap. In this exhibit we have a pendant almost identical to that shown in the complainant's patent in suit, and the language of the claim of complainant's patent in suit is a clear description of this particular exhibit, for we have in the exhibit an interfering device consisting of a pendant made of rubber, loosely jointed to the strap passing around the leg of a horse. If the complainant's patent in suit is not limited so as to be within the terms of the first legal construction, which I have assumed for it, and so as to be clearly within the structure as shown in the patent, or Complainant's Exhibit Defendants' Device, it would be for nothing more than what is clearly exhibited in this Defendants' Exhibit B, and would, therefore, lack novelty.

Referring now to Defendants' Exhibit C, I find that it has a structure in all material respects similar to Defendants' Exhibit B; the pendant, however, being made slightly different, differing from Exhibit B just as the pendant in figure 2 differs from the pendant in figure 1 in the complainant's patent in suit. In this case, the pendant is formed of a strap made with two loops, one of which is loosely jointed to the strap which passes around the leg of the horse, and the other of which supports a short piece of rubber tubing. We, therefore, have in this device an interfering device for horses, consisting of a pendant made of rubber, loosely jointed to the strap, passing around the leg of the horse, and all that I have said with reference to Defendants' Exhibit B, in connection with the complainant's patent, equally applies to this exhibit also.

Referring now to defendants' drawing of Gilbert device, I will state that I understand the structure therein illustrated, and find
334 that it consists of a strap provided with a buckle adapted to encircle the horse's leg, and to which is attached, by a loose joint, a depending chain, to the bottom of which is secured a block of wood. The structure of this device is very similar to Defendants' Exhibit A, except that it is provided at the bottom of the chain with the block of wood, and for the same reasons as stated by me with reference to Exhibit A, it consists of an interfering device, having a pendant of suitable material, loosely jointed to the strap, passing around the leg of the horse, and will embody the structure set out and claimed in the complainant's patent in suit, unless the said patent is so limited as to be within the legal construction which I have assumed for it when comparing the devices set out and claimed in said patent with the defendants' devices; and if so limited, for the reasons already advanced, the

defendants' devices would not embody the structure set out and claimed in the complainant's patent in suit.

Adjourned to Tuesday, March 25th, 1890, at 11 a. m.

335 HAUGHEY
vs.
LEE *et al.*

MEETING, *March 25th*, 1890.

Testimony of RUDOLPH M. HUNTER resumed.

By Mr. HUNTER:

Q. 6. Do you find in the defendants' devices as shown by the exhibits in this case the "pendant" disclosed in the Haughey patent in suit?

A. I do not. The "pendant" in the Haughey patent in suit is a device which is to be hung from the strap by a loose joint, and with full capacity to strike both the leg upon which the strap is secured and the opposite leg. I understand this to be clearly testified to by the complainant Haughey, who is the patentee of the complainant's device, and also by the complainant's expert, Mr. Pickles. The projecting striker in the defendants' device is not so constituted or constructed that it is capable of striking the leg to which the boot is attached. When properly constructed, the defendants' devices project laterally and substantially horizontal. In the exhibits of the defendants' devices as produced by the complainant, constant handling, as before explained by me, has caused said projections to have more flexibility than they had when originally constructed, and they are now in condition in which there is a tendency to sag at their outer ends, this tendency being more apparent in Complainant's Exhibit Defendants' Device than in Complainant's Exhibit Defendants' Device B. This sagging, however, does not impart to the laterally projecting striker a capacity for striking the leg to which the boot is attached, and does not, according to the testimony of complainant's witnesses, Haughey and Pickles, become a pendant. It certainly is not a pendant since it does not hang in a substantially vertical manner, but is designed to project laterally, and be self-sustaining, so that at all times, even when the horse is standing still, it projects toward the other leg of the horse. This is impossible with a pendant. Many of the devices of the prior art, while they are not pendants, and will not hang vertically with capacity for striking the leg to which the boot is secured, do, nevertheless, have a tendency to sag at their outer ends precisely as that tendency may be found in the defendants' device. Among the exhibits of
336 the prior art, to which I would refer in this connection, is the boot of the Dickinson patent which is illustrated in Respondents' Exhibit "Dickinson's Interfering Strap Omitting Internal Projection C," also, Defendants' Exhibit D, and also the interfering device illustrated in Defendants' Exhibit "Stewart Drawing." In

my opinion, therefore, the projection of the defendants' device is in no sense a pendant as said term is used in the complainant's patent.

Q. 7. Will you compare the Exhibit Defendants' Devices with the Complainant's Exhibit "Busch Patent," and state whether in your opinion those devices are made under that patent?

A. I have made the comparison called for in the question, and find that said interfering devices of the defendants are made under the Busch patent referred to, and would state that the claims two, three, four and five of said patent, to Busch particularly, cover the construction of the defendants' device as disclosed in the complainant's exhibits. I might add that I was attorney for Busch in procuring this patent, and am therefore familiar with the invention set out and disclosed in said patent.

Q. 8. Do you consider the invention disclosed in this Busch patent to be subject to the complainant's patent in suit?

(Objected to as incompetent.)

A. I do not, for the reason that it does not disclose a structure embodying the construction of interfering device set out and claimed in the complainant's patent in suit. The horse boot described in this patent to Busch, while greatly superior to the device of the complainant's patent in suit, and as exhibited in complainant's device, is not an improvement upon the said Haughey patent, but is a distinct structure, and is made as an improvement upon the prior art as disclosed in the various exhibits of the defendants entered in this case.

Direct examination closed.

Cross-examined.

By Mr. O'BRIEN:

X Q. 9. How long have you resided and carried on business in Philadelphia?

A. Since the fall of 1878 I have had an office in Philadelphia.

X Q. 10. Have you been continuously in business during that interval up to the present time, in this city?

337 A. I have, and have an office in New York where I am a portion of my time.

X Q. 11. What school or institute of engineering did you study in, and when did you leave it?

A. Polytechnic College of the State of Pennsylvania. I received my diploma in the summer of 1878. In this connection, I might add that I was carrying on business when I went to college to obtain my degree.

X Q. 12. Is that Polytechnic college now in existence?

A. I believe that it is. From the time that I graduated to the present, I have not been to the college.

X Q. 13. Where were you engaged prior to 1878?

A. I was first in business in Cincinnati, Ohio, then in Ironton, Ohio, and from there I went to Chicago, and was in business there,

my office being in the Tribune building. From Chicago, I came to Philadelphia.

X Q. 14. What was the distinctive character of your occupation in Cincinnati? Did you there carry on business for yourself or otherwise?

A. My business in Cincinnati related to patents and inventions. I was in business for myself, and also attended to the business of Mr. Frank Millward, whose office was at that time at Elm and Fourth streets.

X Q. 15. What year was that?

A. It included 1872, 1873, and part of 1874.

X Q. 16. How old were you at that time in 1872?

A. About fifteen years.

— Q. 17. Were you in 1872 engaged in the full exercise of matters requiring the experience and education of a mechanical engineer?

A. I was educating myself for engineering pursuits, and was at that time a thorough mechanical draughtsman and was designing machinery; and also at that time I was familiar with the use of mechanical tools, and was constructing small machinery for my own use, such as looms, printing presses, engines, and similar devices.

338 X Q. 18. How much of your time, in 1872, did you spend in the office of Frank Millward, in Cincinnati?

A. A considerable portion of each day, except when I was engaged at machine work, or out of the city on business. I might add, that I worked constantly, both day and night, at my business.

X Q. 19. Were there other draughtsmen employed at that time in Mr. Millward's office?

(Objected to as irrelevant, immaterial, and not proper cross-examination.)

A. There was a gentleman by the name of Webber at that time, and shortly afterwards a gentleman, by the name of E. J. Gross, was also taken into the office to assist in mechanical drawing.

X Q. 20. Anybody else?

(Same objection.)

A. Not that I recollect at that time, unless Mr. Millward's brother-in-law, John E. Jones, was there.

X Q. 21. Did you know a man there engaged in the business of making patent drawings and the like named Charles Pickles?

(Same objection.)

A. I remember the name of Pickles, and believe that I have met a person by that name in the early part of the seventies, but my recollection of him is very indistinct.

X Q. 22. What has been the general character of the appliances and patented devices that have come under your experience at any time?

A. Almost every device which is known to mankind.

X Q. 23. Can you specify some more prominent than others, if any there be?

A. I have given especial attention to the science of electricity, and suppose that I have given slightly more attention to this science than to some of the others; but my business has always been connected with everything which related to the arts and sciences.

339 X Q. 24. Previous to the present case, have you had anything to do, outside of the Busch patent, with horse boots?

A. I have never had occasion to use horse boots on any of my horses, but have often closely watched the use of horse boots upon the horses of others. I have often examined patents upon horse boots, and while I have prepared applications relative to such matters, I do not recollect at this time the names of the inventors.

X Q. 25. When were you first consulted as the attorney in the matter of the Busch patent in evidence?

(Objected to as immaterial, and not proper cross-examination.)

A. Some time in the summer of 1889.

X Q. 26. Was the complainant's patent considered by you in connection with the matter of making an application for the Busch device?

(Same objection.)

A. I do not recollect that, prior to the Busch device being placed in my hands, that I had any discussion with reference to the Haughey device. I have no data at hand which would enable me to positively answer this question.

X Q. 27. Pending the consideration of matters belonging to the Busch application, did you consider the complainant's patent in connection therewith?

A. The question is ambiguous, and I must request counsel for the complainant to explain what he means.

X Q. 28. As attorney for the inventor in the matters connected with the application for a patent on a horse boot for C. L. Busch, did you have occasion to consider the Haughey patent in connection with that application?

A. In the prosecution of the Busch application, the Haughey patent in suit was considered.

X Q. 29. In what direction did that consideration tend as concerns the anticipation by Haughey of the proposed Busch device?

A. The Haughey patent cited, as is any other patent, to particular wording of a claim which it might meet in terms and not in fact.

340 X Q. 30. Do I understand you, then, that on account of the Haughey patent you changed or modified the original terms of the claims of the Busch application?

(The question is objected to as to the references cited and to the modifications or changes in the application, if any there were, the record itself is the best and only admissible evidence.)

A. The application was prosecuted in the ordinary way in which

applications for patents are prosecuted, which involve more or less changes or rewording of claims, and these changes, such as will be shown by an examination of the file-wrapper and contents in the Patent Office, were made in view of the prior art as disclosed in this case. At no time in the prosecution of the Busch application did I consider that any invention set out or claimed in the Busch application was embodied and claimed in the Haughey patent. The Haughey patent showed certain general constructions, and to that extent only was it cited as a reference in connection with other patents, as will be shown by an examination of the file-wrapper as aforesaid.

By Mr. BLISS:

X Q. 31. I understand, then, that in your opinion, the Busch device does not contain or embody a pendant device loosely jointed to a leg strap; is that correct?

A. It does not contain a pendant loosely jointed to a leg strap as such terms are employed in the complainant's patent, and as testified to by the complainant and his expert, Mr. Pickles.

X Q. 32. Will you please define in what sense you use the word "pendant" in your last answer?

A. I used it in the same sense in which it has been testified to by the complainant and his expert, Mr. Pickles; that is to say, it is a device connected to the leg strap hanging vertically, and adapted to strike the leg of the horse to which it is secured, as well as the opposite leg.

X Q. 33. Do you mean that a pendant device is one that hangs vertically?

A. Vertically or substantially vertically with the capacity which I have stated in my previous answer, and this is the sense in which said term is used in the complainant's patent, and both by the complainant and his expert, Mr. Pickles.

X Q. 34. Then I understand that in your opinion, the pendant referred to in complainant's patent applies only to a device which hangs vertically, or substantially so?

341 A. Yes, excepting when said device is thrown into another position by centrifugal force, due to the movement of the horse's leg. This capacity being permitted by the loose joint between the pendant and the leg strap.

X Q. 35. I will modify my question in which the qualification you have suggested, and state it as follows: In your opinion does the pendant described in the complainant's patent refer only to a device, which normally, without being swung or interfered with, hangs vertically, or substantially vertically?

A. It certainly does.

X Q. 36. And your testimony in this case is based entirely upon that construction?

A. By no means. Whether or not the court agreed with me as to the necessity of the pendant in the complainant's patent hanging vertically or substantially vertically normally, it would not in the least modify or change the intent of my evidence as to the defend-

ants' device, not embodying the structure set out and claimed in the complainant's patent in suit.

X Q. 37. Do I understand, then, that in your opinion the defendants' device does not contain a pendant without reference to the particular definition of the word "pendant"?

A. It does not employ a pendant as said term is employed in the complainant's patent in suit.

X Q. 38. Please state specifically what you mean by the qualification, "as the term pendant" is employed in the complainant's patent?

A. I mean that the pendant as used in the complainant's patent must be a device which may hang vertically, since it is loosely jointed to the leg strap, and is capable of so hanging, and must have the capacity for striking both the leg to which the leg strap is secured as well as the opposite leg.

X Q. 39. I desire to know whether, in your testimony, you have uniformly regarded "a pendant," as the term is used in the complainant's patent, as referring to a device which normally hangs in a vertical position, or substantially so, or whether you include within the term a device which would normally hang at an angle of forty, or fifty, or sixty degrees with the horizon.

A. I think that I have always used the term "pendant," in my testimony with reference to the pendant of the complainant's patent, which hangs vertically, or with reference to those of the
342 defendants' exhibits as hang vertically; for instance, Defendants' Exhibit C, Defendants' Exhibit B, Defendants' Exhibit E, Respondents' Exhibit A, and Defendants' Exhibit Drawing of Gilbert Device.

X Q. 40. Assuming, then, that the pendant claimed and described in the complainant's patent refers to a device which hangs vertically, or nearly vertically, you do not find such a device in the Busch dangle-boot?

A. No, sir; I do not.

X Q. 41. Do you find any such device described or referred to in any of the prior patents which have been put in evidence in this case as showing the state of the art?

A. The prior patents do not show a pendant as hanging vertically, or substantially vertically, from a leg strap, but, on the other hand, shows the projection or striker in positions identical with, or closely resembling, that of the Busch boot which is made by the defendants.

X Q. 42. Then, in short, you do not find in any of the prior patents a pendant such as you believe to be referred to in the complainant's patent?

A. I do not, for the reason stated in my previous answer.

X Q 43. And you do not find anywhere in the prior art, laying aside for the present the alleged instances of prior use which have been testified to, any interfering boot consisting of a pendant loosely jointed to a leg strap, using the word "pendant" in the sense in which you have testified it is used in the complainant's patent, namely, a device which normally hangs in a vertical, or nearly vertical, position?

A. I do not find in any of the patents offered in evidence by the defendants a pendant loosely jointed to a leg strap so as to hang vertically, or substantially vertically, and adapted to strike the leg to which the leg strap is secured as well as the opposite leg.

X Q. 44. I now call your attention to Respondents' Exhibit Sample of Respondents' Device, which was produced by you, and offered in evidence, and as to which you expressed a desire that it should be handled with great caution. I am correct, am I not?

A. I produced the exhibit referred to in the question, and desired that it should be presented to the court in the condition in which it now is, and requested that the projection or striker should not be pulled and twisted as was the case with the Complainant's Exhibit Defendants' Device, and Complainant's Exhibit Defendants' Device B, so that the court could see for itself what the actual con-
343 struction of the defendants' device is as it is placed upon the market, and in what condition the exhibits were, no doubt, when first purchased in behalf of the complainant. In view of the language contained in the question, I will state that complainant's counsel, who is cross-examining me, stated that he would like to pull the projection or striker of the Respondents' Exhibit Respondents' Sample of Respondents' Device, and that he was cautioned to handle it with care, so that it would not be in any condition when presented to the court except that in which it is now.

X Q. 45. How many specimens of the Busch boot have you, yourself, actually seen?

A. Quite a number; how many, I do not know. The exhibit which I referred in my previous answer was one of a number which was in my office, and I simply produced it as a fair sample of all the Busch boots which I have seen, and which were made by the defendants.

X Q. 46. Are you, yourself, engaged in the business dealing in horse boots?

A. As previously testified to by me, I own my horses, but have never had occasion to use a horse boot or interfering device, but have observed the use of them on other horses. I am not engaged in the business of selling horse boots, nor have I any connection with such business other than purchasing supplies for my stable.

X Q. 47. Have you, at any time, been at the store of the defendants, and observed sales made by them of the Busch boot?

A. I have frequently been at the store of the defendants, and while I have observed the Busch boots, I have never seen an actual sale made in their store. I have seen the Busch boots in use on horses.

X Q. 48. And you swear that the boots which you have seen in use on horses were in the same condition as the Respondents' Exhibit Respondents' Sample of Repondents' Device now is?

A. Any device of this nature, after being in use for awhile, will naturally have the striker, or projection, when weighted by the rubber balls, sag slightly at its free end; and beyond this all the Busch boots which I have seen in use were in substantially the same condition, beyond ordinary wear and tear, of the Respondents'

Exhibit Respondents' Sample of Respondents' Device. I have never seen a Busch boot which could by any possible means operate so that its projection or striker could strike the leg to which the boot was attached.

X Q. 49. You never saw Complainant's Exhibit Defendants' Device, and Complainant's Exhibit Defendants' Device B, before they were put in evidence in this case, did you?

344 A. I have never seen those particular boots before they were put in evidence on the motion for preliminary injunction in this case.

X Q. 50. And you do not know, of your own knowledge, what condition these exhibits were in at the time they were purchased from the defendants?

A. I believe that I saw the first Busch boot made by the defendants, and have at various times examined other boots, also made by them under the Busch invention; and while I do not know as a fact that I have ever seen the particular complainant's exhibit of the Busch boot before they were put in this case, yet I have never seen a single Busch boot outside of those exhibits, either in a store or in use, in such a condition as said exhibits are in, and particularly with reference to Complainant's Exhibit Defendants' Device.

X Q. 51. You testified a few moments ago that you had never seen a Busch boot which could, by any possible means, operate so that its projection or striker could strike the leg to which the boot is attached. I call your attention to Complainant's Exhibit Defendants' Device, and ask you whether, if that were attached to a horse's leg, its projection or striker could not strike the leg to which it was attached?

A. In giving my answer to cross-question 48, I had reference to Busch boots as I have found them upon the market and in use, and did not refer to the complainant's exhibit referred to in the question in its present condition. However, since the question has been specifically asked, I will say that I do not believe that under the ordinary use of the——

(Counsel for the complainant desires the examiner to note on the record that the witness has made a pencil drawing after closely examining the exhibit handed him, and refuses to permit said drawing to be offered in evidence.)

Witness (continuing): In view of the interruption, I will repeat. However, since the question with reference to the particular exhibit has been specifically asked, I will say that I do not believe that under the ordinary use of the boot, even in its present abnormal condition, the projection or striker would, in the normal operation of the Busch boot, strike the leg to which the boot is attached. I feel very positive in making this statement, knowing as I do, the anatomy of the horse's leg, and the movement of the leg in motion.

X Q. 52. What is the material composing the strap or loop which passes through the centre of the striker in Complainant's Exhibit Defendants' Device, and Complainant's Exhibit Defendants' Device B?

A. The material is rawhide. I would wish to remark that while putting the present question to me, counsel for the complain-
345 ant deliberately pulled upon the projection or striker upon which the rubber balls are placed in Complainant's Exhibit Defendants' Device B, which is only one of the numerous instances in which I have seen these complainant's exhibits of defendants' device wrenched and twisted with the result of abnormally stretching the rawhide, so as to loosen the projection or striker with reference to its connection with the leg strap.

X Q. 53. What is the difference between leather and rawhide?

A. Rawhide is untanned leather, or, more properly speaking, skin, and is much tougher and less liable to be broken by constant bending. For this reason it has been used in the Busch boot.

X Q. 54. Do you state the reason for its use in the Busch boot of your own knowledge, or is it merely a guess on your own part?

A. I think I can say that it is from my own knowledge. I might state here, that in the first Busch boots which were made the leg strap was stitched to the pad, as shown in the complainant's exhibits, but in the later constructions of the Busch boot these stitches were eliminated so as to enable, in the use of the boot, the taking up of even the slightest sagging of the projection or striker, and thereby enable it to stand horizontally from the leg of the horse at all times. The rawhide was used in this improved construction for exactly the same purpose that it is used in the original construction similar to the complainant's exhibits, that is, for its toughness and durability, as well as capability of resisting wear in long use. While it has these excellent qualities, it still has a slight defect, in that it is more extensible than leather, which extensibility was the cause of the slight sagging found in the first boot when constantly used. As this sagging was objectionable and inconsistent with the object of the Busch boot, the modification referred to was at once resorted to by the defendants, so that all extension due to stretching in the rawhide could at once be taken up, and the projection or striker at all times maintained in a perfectly horizontal position with reference to the leg of the horse.

X Q. 55. Are all of these statements which you have made with regard to the reason *from* changing from leather to rawhide, and with regard to the earlier and later construction of the Busch boots, and the reasons which the defendants had for such change, made from your own knowledge?

A. I think I may properly say that they are made from my own knowledge, as that knowledge has been gained from the defendants, the inventor Busch, and my intimate knowledge of the various constructions as made by the defendants from time to time.

(Counsel for complainant objects to the witness' answer to the 54th cross-question, for the reason that it is palpably based upon
346 mere hearsay, and the witness shows no such connection with the business of the defendants in the manufacture and sale of horse boots as to warrant him in swearing, as he does, to changes in construction and the reasons therefor.)

X Q. 56. You have testified that rawhide is more extensible than leather, have you not?

A. I have.

X Q. 57. Leather is itself quite extensible?

A. If leather is soaked it can be extended somewhat.

X Q. 58. Can it not be extended or stretched considerably without soaking it?

A. Not in such a device as that made by the defendants; but the horizontal springing of the projection, or striker, would have a tendency to break the leather in two and destroy the device before it had been in use very long, and for this reason the rawhide was used in place of leather.

(Question repeated, and the attention of the witness is called to the fact that the question is not limited to the use of leather in any particular device, but refers to leather generally.)

A. Nearly all substances are extensible, and, speaking generally, leather is extensible under certain conditions, just as iron and steel are extensible under certain conditions.

X Q. 59. Do you mean to imply by that answer that leather is no more extensible than iron or steel?

A. Not at all. It is more extensible than iron or steel, just as it is less extensible than rubber.

X Q. 60. You know, do you not, that the defendants' device has been placed upon the market under the name of "Busch's dangle-boot." Will you please state what the word "dangle" means in that connection, if you know?

(Objected to as incompetent, irrelevant, immaterial, and not proper cross-examination.)

(Question withdrawn.)

R. M. HUNTER.

Adjourned to Wednesday, March 26th, at 10 a. m.

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HAUGHEY
vs.
LEE *et al.*

MEETING, *March 26th*, 1890.

(Counsel for respondents offers in evidence for use at the hearing the device produced by the witness, Solomon Gilbert, and the same is marked Respondents' Exhibit Gilbert Device.)

HENRY DEEMER sworn.

By Mr. HUNTER:

Q. 1. What is your name, age, residence and occupation?

A. Henry Deamer; fifty; 11 South Sixteenth street; place of business, 1520 Market street; harness-maker.

Q. 2. How long have you been connected with the harness-making business?

A. I was born in it.

Q. 3. I understand, then, that you have been connected with it all your life?

A. All my lifetime, with some few intermissions, as I stated in my former testimony.

Q. 4. Are you more or less familiar with different kinds of horse boots?

A. I am.

Q. 5. Are you familiar with the so-called Haughey boot, in which there is a leg strap for attachment to the leg of a horse, and a pendant portion formed of rubber balls?

A. I am.

348 Q. 6. When did you first see that so-called Haughey boot, as nearly as you can recollect?

A. I cannot give the exact date; I suppose maybe two years ago.

Q. 7. Prior to that time, had you ever heard or seen a horse boot employing a leg strap, and a pendant portion carried thereby?

A. I had.

Q. 8. Will you please briefly describe that boot?

A. I helped to make a boot of that kind thirty years before. I had it made by one of the men in the store.

Q. 9. I now hand you a device, which is entered as an exhibit in this case, and marked Defendants' Exhibit C, and ask you whether you have ever seen such a device as that before?

A. Yes; I have.

Q 10. Is this the device to which you have just referred in your previous answer?

A. The same identical idea.

Q. 11. When did you first make, or have made, such a device as this?

A. I could not tell that. It has been thirty years at least.

Q. 12. Did you make more than one of these boots?

A. Oh, yes; lots of them; that is, a good many. I could not tell in that time, because, as I said before, harness-makers only made boots on the order of blacksmiths.

Q. 13. For whom were these boots made?

A. John Chestnut.

Q. 14. Who was John Chestnut?

A. He was a blacksmith and farrier.

Q. 15. Do you know where John Chestnut now is?

A. He is dead.

349 Q. 16. When did you last make, or have made, a boot of this character?

A. I think we made one of them about five years ago.

Q. 17. Were these boots made in the regular course of your business?

A. Regular course of business; yes.

Q. 18. I now hand you a device entered as an exhibit in this case, and marked Respondents' Exhibit E, and ask you whether you have ever seen anything similar to that before?

A. Yes; made dozens of them.

Q. 19. What were these devices used for, if you know?

A. With a long chain, it was made to keep a horse from kicking; and with a short chain, it was made to make him spread his legs.

Q. 20. About how short was the chain which you speak of as the short chain?

A. The one that was made for the kicking chain was made about a foot long, a great deal heavier than that one. If it was shortened, it would be from four to five inches.

Q. 21. I now hand you a device which is marked as an exhibit in this case, Respondents' Exhibit A, and ask you whether that is substantially what you described as the device with a short chain?

(Question objected to as incompetent, and for the reason that the question does not confine itself to the pleadings.)

A. The same thing, only with a heavier chain.

Q. 22. Have you ever seen such devices as this marked Respondents' Exhibit A, and Respondents' Exhibit E, in use on a horse?

(Same objection as before.)

A. Yes, I have.

Q. 23. How long ago did you make such devices as these, and how long ago did you see them used?

A. Well, we made a chain-boot inside of ten years.

350 Q. 24. Have you seen many or few of these?

A. I guess I have seen a good many. They used to be quite common years ago.

Q. 25. Will you describe how these devices were attached to the horse's leg?

A. Just buckled round above the fetlock joint.

Cross-examined.

By Mr. O'Brien:

X Q. 26. You are the same Henry Deamer, who made an affidavit in this case, on the 21st of January last, are you not?

A. I guess so. There is only one Henry Deamer about that would make an affidavit.

X Q. 27. In that affidavit did you not state that interfering devices for horses employing a leg strap, and a pendant, and operating in substantially the same manner, as the Haughey device were made, and practically and publicly used prior to the 22d day of September, 1885?

(Objected to as not proper cross-examination.)

A. Yes; they were made twenty years before then.

X Q. 28. Where did you see them publicly used, and by whom?

A. I don't know.

X Q. 29. Can you give us any instance where you saw a public use of Exhibit C, shown in your direct examination?

A. I only made them.

X Q. 30. Did you ever see one of them on a horse in your life?

A. I think I have.
X Q. 31. When and where?
A. I cannot tell.
X Q. 32. Where were you in 1860?
A. In Philadelphia.
351 X Q. 33. What were you doing?
A. Harness business.
X Q. 34. What did you do in the harness business at that time?
A. Worked at the harness trade.
X Q. 35. For whom?
A. My father.
X Q. 36. Is he alive now?
A. He is.
X Q. 37. Where was the shop you worked at at that time?
A. 1515 Market street.
X Q. 38. Same place now?
A. No, sir.
X Q. 39. Where is the place now?
A. 1520 Market street.
X Q. 40. Who carries on the business at 1520 Market street?
A. I do.
X Q. 41. In whose name is it carried on?
A. Henry Deamer.
X Q. 42. Junior or senior?
A. Either one.
X Q. 43. Has Henry Deamer, Sr., anything to do with it?
A. He has.
X Q. 44. Has he always had?
A. Always.
352 X Q. 45. Did he carry it on exclusively in 1860, at the time you speak of?
A. He did.
X Q. 46. Were you working at the bench at that time?
A. I was working most every place.
X Q. 47. I mean did you put your apron on and work at the bench at that time?
A. I did.
X Q. 48. And you remember distinctly, thirty years ago, having made a device like Exhibit C at your father's shop, at 1515 Market street, in this city?
A. I either had it made, or seen it being made in charge of some of the men.
X Q. 49. What makes you say it was made, without giving any more definite data for it?
A. Shall I explain?
X Q. 50. Yes.
A. When we had a blacksmith come into the shop to have a device made for interfering, it was generally explained to me, and I had the men make it.
X Q. 51. What was your father doing?
A. Well, my father might have been taking the idea himself.

X Q. 52. But you are not positive that you ever saw it on a horse belonging to any person whom you can now name?

A. No, I am not positive of that.

X Q. 53. Do you know where this Exhibit C came from, the thing that you have seen here?

A. I do.

X Q. 54. Where did it come from?

A. Came from my shop.

353 X Q. 55. When?

A. I forget when that was made.

X Q. 56. Approximately tell us.

A. I guess that was made in the place of one that was lost. Mr. Lee came up to see if I could make a duplicate of one that he had lost, and I made him a duplicate.

X Q. 57. When was that?

A. I guess that was last Thursday or Friday.

X Q. 58. Are you sure that you personally made devices similar to Exhibit C, in your father's shop?

A. I am not sure.

X Q. 59. Can you recollect the circumstances under which you first had this device called to your attention, thirty years ago?

A. I can.

X Q. 60. Please state what they were?

A. They were made for an old blacksmith and farrier, by the name of John Chestnut.

X Q. 61. Please state the circumstances surrounding it, as near as you can?

A. In those days, harness-makers only made boots on orders from blacksmiths who attended to horses' feet. When a horse interfered, or needed any arrangement to keep him from interfering, the blacksmith and farrier attended to it, and had the device made by the harness-maker.

X Q. 62. Is that as particular as you can be as to my question?

A. That is as particular as I can be.

X Q. 63. Then you base your answer upon what you did generally in the shop?

A. Certainly.

354 X Q. 64. But, as I understand you, you cannot recall the particular circumstances?

A. No; because we had made dozens of them, I suppose.

X Q. 65. Who else did you make them for besides John Chestnut?

A. I don't know that any other blacksmith dealt at the shop. He also had a stable in connection with the blacksmith shop.

X Q. 66. Was it a part of your duties, in your father's shop, to make these boots at that time?

A. I guess it was.

X Q. 67. What makes you say you guess it was? Can you not give us any more positive answer than that?

A. Well, I generally used to do as I pleased around the shop. I worked when I felt like it, and didn't work when I didn't feel like it.

X Q. 68. Did Mr. Chestnut go to you directly, do you remember?
A. Directly; yes.
X Q. 69. That was in 1860?
A. No, I did not say that.
X Q. 70. When did he come to you directly?
A. I cannot say. I say that it has been more than thirty years ago.
X Q. 71. What did you do when he came to you about that thing like Exhibit C?
A. He would bring a piece of old hose, and I would make a device for him, or have it made.
X Q. 72. Well, do you mean that you made it, or had it made?
A. Had it made at the shop.
X Q. 73. You did not make it yourself?
A. I might have made it myself; I possibly might.
355 X Q. 74. Are you sure that you had or had not?
A. I am not sure whether I did or did not make it.
X Q. 75. Did he used to bring the hose along with him?
A. He generally brought a piece of old hose with him.
X Q. 76. What time did you make the last boot in your shop for Chestnut?
A. That I couldn't tell.
X Q. 77. Give us approximately the time.
A. I think he had been out of business for ten years, at least, if not more.
X Q. 78. Can you not give us approximately the time?
A. No, I cannot. I do not remember when he retired from business. I suppose about 1870; around there; maybe 1875, because he carried on the business in the carriage way afterwards in another concern.
X Q. 79. Do you specially recall any time that you made the last boot of that character which you say you made like Exhibit C?
A. I think I made one about five years ago.
X Q. 80. For whom?
A. I don't know.
X Q. 81. Where?
A. I think that was made at 1520 Market street.
X Q. 82. What was it made for?
A. To prevent a horse from interfering.
X Q. 83. How did it happen to be made?
A. Somebody happened to order it.
X Q. 84. How did you come to know that?
A. I don't know. I might have happened to have been there.
356 X Q. 85. Did you know the man that came there?
A. I guess I must have known him; I don't remember who he was, though, now, because it was such a trivial thing that I would not take any particular notice of it.
X Q. 86. Did you take any particular notice of it at that time?
A. I remember making it, or having it made.
X Q. 87. Did you see the man use it?

A. No.

X Q. 88. Do you know what he was going to use it for?

A. Yes.

X Q. 89. How did you know that?

A. Because he told me.

X Q. 90. What did he tell you he was going to use it for?

A. To prevent a horse from interfering.

X Q. 91. What did you say to him?

A. I told him it was a very good idea.

X Q. 92. Is that all you said to him?

A. That was all, I guess.

X Q. 93. Were you acquainted with him?

A. I think I was. I do not remember who it was, though. I must have been acquainted with him, or else I would not have undertaken to make that boot for him.

X Q. 94. Did you ever see it on a horse?

A. I may have seen it, but if I did, I don't remember.

X Q. 95. The only man, however, you ever made these boots for was Chesnut?

A. In my early times, yes.

357 X Q. 96. At any time?

A. No.

X Q. 97. Who else did you make them for?

A. I said I didn't know who the man was, or, at least, I do not remember who he was.

X Q. 98. You did not see him put it on the horse?

A. No.

X Q. 99. You never saw it on any of Chestnut's horses?

A. That I cannot say.

X Q. 100. Do you not remember testifying that way?

A. I say, that I cannot say.

X Q. 101. Prior to making it for this man that you cannot name, which you think was done about five years ago, when did you last see a specimen like Exhibit C, up to that time?

A. I seen it twenty-five years ago.

X Q. 102. You fix that as the time in answer to my question?

A. Well, you say the last time I seen it?

X Q. 103. Yes.

A. I seen it when I first made it. That has been thirty years ago; and I guess I seen it for seven or eight or ten years afterwards.

X Q. 104. And the last you seen of it, prior to this one that you speak of five years ago, was long about twenty years ago?

A. Prior to the last one?

X Q. 105. Yes.

A. Yes; I suppose, maybe, twenty years ago, round there about: 1872 or 1873.

358 X Q. 106. You never seen it outside of your own shop?

A. No; that is, not that I can remember of. I might have seen it dozens of times, and never took notice of it.

X Q. 107. I want your best recollection of it, and that is what I would like to have you give us.

A. That is the best of my recollection. The last I seen of it was about five years ago. That was the one that I had made, and these two that I had made within the last three months, and before that I do not recollect seeing it. I suppose maybe later than Centennial year, because then I was out of the business for awhile.

X Q. 108. Your father was actively engaged in business up to five years ago, was he not?

A. Yes, sir.

X Q. 109. And he comes down to the store now every day when it is fair, does he not?

A. If it is a nice day and he feels well.

X Q. 110. Aside from his age he is in comparatively good health for an old gentleman, is he not?

A. His health is good enough.

X Q. 111. You never owned a horse yourself?

A. I do not say that.

X Q. 112. Well, did you?

A. I thought I had a share in one, at one time.

X Q. 113. Did you ever own a horse?

A. Not individually; no.

X Q. 114. Can you tell us if you ever made this boot like Exhibit C for any person except Chestnut?

A. Yes; I said a good while ago that I made one five years ago, and I made two for Jesse Lee & Son.

359 X Q. 115. Are you sure you made them for Chestnut?

A. Certainly.

X Q. 116. And you are sure that you made them for this man five years ago, whose name you cannot remember?

A. Yes; I do not remember who he was.

X Q. 117. In your former examination in answer to question 32, which was, "Q. 32. Did you ever make that boot for any one but Chestnut?" you said, "A. 32. I really cannot say whether I made them for Chestnut only; I made them on Chestnut's order, and I don't know of any one else."

A. That is what I say yet.

X Q. 118. I thought you said now that you knew of having made one for somebody else five years ago?

A. I said that I could not remember.

X Q. 119. Is your memory any better now than it was two months ago?

A. Not a bit.

X Q. 120. Then I understand you to testify now that you do not know of any one else, except Chestnut?

A. No, I did not testify to that. I said I could not say who the other was made for.

X Q. 121. In making the model of the device, Exhibit C, which was previously made to the one marked, do I understand you as having drawn upon your memory of what you had seen done thirty years ago?

A. That was my idea.

X Q. 122. How came you to make that first one for the defendants?

A. They asked me if I had ever seen a boot of that kind before.

X Q. 123. Who did?

A. Jesse Lee & Son, whichever one it was; I do not remember now. I said I had. I said I had made the same thing thirty years ago, only made it of hose instead of rubber balls.

360 X Q. 124. Where did that conversation take place?

A. At my store.

X Q. 125. Was that after the commencement of the suit?

A. I don't know when the suit was commenced.

X Q. 126. The suit was commenced in October last.

A. Then it was after that.

X Q. 127. What boot did he show you, when you told him that you had made a similar boot thirty years ago?

A. His own boot.

X Q. 128. What was it called?

A. It was not called anything. It had on the side "patent applied for."

X Q. 129. Was that the first time you saw a boot of that kind when the defendant showed it to you?

A. No; I had been selling them for, I suppose, a month before that.

X Q. 130. Where did you buy them?

A. Jesse Lee & Son.

X Q. 131. You had been handling the Haughey patent boot also?

A. I think I sold half a dozen of those; somewheres round there.

X Q. 132. Where did you procure those?

A. George De B. Keim & Co.

X Q. 133. Those that you procured were marked "patented," were they not?

A. It was stamped on the plate. You couldn't read what it was there; but I knew what it was.

X Q. 134. Then all the time you handled this kind of boots, you recollected that you had seen them made thirty years ago?

A. Certainly; that was the same device.

361 X Q. 135. Did you not know that you had to pay extra for the royalty on the patent boots?

A. No; I did not know that.

X Q. 136. Do you remember how much a pair you paid for the Haughey boot?

(Objected to as immaterial, and not proper cross-examination.)

A. I do not recollect that. It has been some time since I bought any.

X Q. 137. You do know, as a matter of fact, that you could make such a device as Exhibit C shown you, at a good deal less cost than you could purchase the Haughey boot?

A. There is no doubt about that.

X Q. 138. A difference of six to one, would there not?

A. They would cost me about fifty cents a pair; somewheres round there. I could not tell unless I weighed the leather and got the price of the hose.

X Q. 139. And the others you paid over a dollar a pair for?

A. I do not know about that; I cannot say.

X Q. 140. You say you kept the Busch boot and the Haughey boot in stock at your store for the same purpose and at the same time?

A. The purpose was for to sell them.

X Q. 141. Were they used for the same purpose on a horse?

A. I never used one myself.

X Q. 142. Did you sell them for use for that purpose?

A. I sold them for use, I suppose, as an interfering boot.

X Q. 143. Is five years ago as near as you can place the time when you think you made these two for this person whose name you cannot recall?

A. That is about as near as I can locate it.

362 X Q. 144. In answer to question 46 in your former examination: "When did you last see a device of this kind (Deamer) used on a horse?" you said: "A. Inside of three years; it was not the exact thing, but was the same thing, a piece of hose for a dangle."

A. That is correct.

X Q. 145. Where did you see that?

A. I must have seen it on the street, if I said so.

X Q. 146. Do you consider that device a dangle that projects below the leg strap in Exhibit C?

A. I do not know what your idea of a dangle is. We never called it a dangle; we called it an interfering boot.

X Q. 147. Do you know of anybody calling it a dangle-boot yourself?

A. No; only what I have heard you folks talking about That is all I know about it. I never heard it called a dangle-boot.

X Q. 148. Can you recall now where you saw this piece of rubber hose three years ago?

A. No, sir.

X Q. 149. Is there anything connected with it that you say that you saw it three years ago that would make you recall the fact?

A. Only the idea of having one to make again.

X Q. 150. You did not make any inside of five years, until you made this one for Mr. Lee?

A. It might have been a shorter time than that. We would never think of keeping an account of a thing like that, from the very fact that we did not make a boot only once in a year.

X Q. 151. Was your answer three years or five; which will you say now to be correct?

A. Well, an average between them.

X Q. 152. Can you give us no more definite answer than that?

A. No, sir.

363 X Q. 153. You never seen them in use on the street, such as Exhibit C?

A. I did not say that; I said I think I have.

X Q. 154. But you cannot recall any instance particularly?

A. Well, that could be put down in very plain terms, so as to be understood better. In those days we did not always use a piece of hose, because the patent on hose had expired, and you can use the same thing as rubber balls.

X Q. 155. I want to know if you can give me the name of any person upon whose horse you seen a device similar to Exhibit C, at any time.

A. I cannot.

X Q. 156. And you cannot give me the name of any person other than Mr. Chestnut, who is long since dead, for whom that kind of a boot was made, to your knowledge?

A. I cannot; excepting the man that I made it for a few years ago, whose name I don't know.

X Q. 157. Did you ever see any device like Exhibit C in anybody else's possession, or made by any other person excepting yourself?

A. I think I have.

X Q. 158. Can you give me the name of any harness-maker or boot-maker, that you know ever made a device of that kind in this city or elsewhere?

A. I am not acquainted with any harness-makers in Philadelphia particularly, because I am very exclusive in my own trade, and so I don't know any.

X Q. 159. That is the best answer you can give my question?

A. That is the best answer I can give you.

X Q. 160. Do you not think it somewhat singular that a man should come into your shop in this city, and ask you to make a boot that was exactly like a boot that you used to make for Chestnut twenty years or twenty-five years previously?

A. No; I do not think there is anything singular about that.

X Q. 161. Didn't say anything about it?

A. I say I do not think there is anything singular about it.

364 X Q. 162. Well, I say, didn't say anything about it to him?

A. I told him when they first commenced to manufacture that boot, that I had seen the same old thing thirty years before, only made with hose instead of balls.

X Q. 163. Do you know, as a matter of fact, whether any other person ever made a device like Exhibit C, beside yourself?

A. Any other harness-maker, do you mean?

X Q. 164. Yes, sir.

A. No, I do not know of any other. There might have been lots of them, though. I guess there were. Every good farrier used to make the same boot, or have the same boot made.

X Q. 165. If you regarded the Haughey boot as old, why did you handle it as a patented article in your business?

A. I did not handle it as a patented article. I just merely sold it in connection with other boots.

X Q. 166. That is the reason you did so?

A. Certainly.

X Q. 167. Why did you not make it yourself, if you did not consider it to be a valid patented device?

A. We do not make boots any more.

X Q. 168. You have a call for that kind of boots, or else you would not keep them in stock?

A. Certainly.

X Q. 169. Then why did you not make them yourself?

A. Because we can buy them cheaper than what we can make them—a general line of boots.

X Q. 170. And you believed that you could make the Haughey boot cheaper than you could buy it from the patentee?

A. I certainly do.

365 X Q. 171. Am I correct in understanding your testimony, so far as it is specific, to be confined in your knowledge of such devices as is shown by Exhibit C in the boots you made for Chestnut thirty years ago, and in what you have done for the defendants in this case, and the instance you referred to of three or five years ago, having made them for a man whose name you cannot give?

A. Yes, certainly.

X Q. 172. And that was all the knowledge you had at any time in this case?

A. Yes; all I had.

X Q. 173. And you don't remember how many you made for Chestnut?

A. No, I cannot tell. As I said, it might have been thirty, or might have been forty, or might have been fifty.

X Q. 174. Your memory for dates cannot be very good, can it?

A. It is very good in anything that I am interested in, or anything that I think is of any importance.

X Q. 175. Did you consider this matter of importance?

A. None whatever.

X Q. 176. And your memory in a matter of this kind would not be such as you would consider good?

A. In a matter of this kind it should be very good, and it would be very good.

X Q. 177. Then why is it you cannot fix a time within two years of the recollection you have about making this boot for a stranger?

A. Because I would not think it of any importance.

X Q. 178. I understood you just now to say that you did consider that matter of some importance.

A. I did not say that I did not consider it of any importance. I said this matter was of some importance, being fixed on my mind; that is, I mean to refer to a hearing of this kind.

X Q. 179. I mean the boot, not the hearing.

A. No; I never paid any attention to that.

366 X Q. 180. You would not pretend to be particular as to your recollection of that boot?

A. Not a particle, no.

X Q. 181. Do you know old Mr. Heidrick, the harness-maker, on Market street?

A. I do.

X Q. 182. Do you know what number his place of business is?

A. I think it is 1534.

X Q. 183. How long have you known him?

(Objected to as irrelevant, immaterial and not proper cross-examination.)

A. I cannot tell how many years.

X Q. 184. Who owns the stock at 1520 Market street; yourself or your father?

A. That belongs to the family.

X Q. 185. Do you mean by that your father and yourself?

A. No; the whole family, and we own it.

X Q. 186. How many men are there employed there?

A. Sometimes two, sometimes five, sometimes six, sometimes seven.

X Q. 187. Have you always lived in this city?

A. Always lived in this city; born here, father was before me, grandmother and grandfather.

X Q. 188. Have you always worked in your father's shop?

A. Not always.

X Q. 189. With what exception, in the last thirty years?

(Objected to as immaterial.)

A. I decline to answer that.

367 X Q. 190. Did you work there in 1863?

A. I did.

X Q. 191. Why do you decline to answer my question as to any exceptions?

(Same objection.)

A. I decline to answer that.

X Q. 192. Are you willing to give us any reason for declining to answer that question?

A. I decline to answer that.

X Q. 193. Have you ever had any illness in your life that would impair your memory?

A. I have not.

X Q. 194. Have you ever used liquor?

(Objected to as immaterial, irrelevant and not proper cross-examination.)

A. I decline to answer that.

X Q. 195. You have studied medicine, have you not?

(Same objection.)

A. I decline to answer that.

X Q. 196. Have you any reason for declining to answer that question?

A. I decline to answer that.

(Counsel for complainant desires the examiner to note that he shall claim at the hearing that this witness declines to submit himself to proper cross-examination.)

(Counsel for respondents denies the allegation of counsel for complainant. The witness does not deny to submit himself to proper cross-examination, and only refuses to answer immaterial, irrelevant and improper questions which have nothing to do with the matter in controversy. The witness is perfectly ready and willing to answer all proper questions that may be put to him, and is tendered to the complainant's counsel for further proper cross-examination.)

368 X Q. 197. Have you ever used liquor in your life to excess?

(Objected to as not proper cross-examination.)

A. I decline to answer.

X Q. 198. Have you ever been in the habit of drinking intoxicating liquor?

A. I have.

X Q. 199. How frequently have you used intoxicating liquor prior to the last two years?

A. Oh, I used it every day.

X Q. 200. Do you use it to excess?

(Objected to as improper and irrelevant.)

A. No; I can answer that without any hesitancy.

X Q. 201. Has its use made you quarrelsome at any time?

(Same objection.)

A. Never.

X Q. 202. Did it not result in your giving difficulty to your family?

(Same objection.)

A. I decline to answer that.

X Q. 203. Have you ever been arrested on account of it?

(Same objection.)

A. I decline to answer that.

X Q. 204. I will ask you who you purchased the first boots of the Haughey patent from that you ever used?

A. I think they came from George De B. Keim & Co. At least, I think I am pretty near positive they did come from there.

369 X Q. 205. Did you buy them direct?

A. I did not.

X Q. 206. Why?

(Objected to as immaterial.)

A. Because I don't deal at the place.

X Q. 207. Had you ever dealt there?

(Same objection.)

A. Not since I have been carrying on the business.

X Q. 208. How did you manage to buy them from George De B. Keim & Co.?

(Same objection.)

A. I sent somebody to purchase them.

X Q. 209. You had no credit account there at that time?

(Same objection.)

A. Which time?

X Q. 210. When you bought these boots, you had no open account?

A. I never had an account with George De B. Keim & Co.

X Q. 211. Did your father?

A. I don't know.

X Q. 212. How long ago was it that you made this purchase from George De B. Keim & Co.?

(Same objection.)

A. I don't remember.

X Q. 213. Was it when you first became acquainted with the Haughey boot?

A. Perhaps it was.

370 X Q. 214. How did you come to buy the Busch boot?

A. I guess it was shown to me.

X Q. 215. At the defendants' place?

A. Might have been by one of the salesmen. A salesman comes to the store pretty near every day.

X Q. 216. You say you keep both kinds in the stock of your store?

A. We did. We do not keep either one now.

X Q. 217. These chain exhibits for kicking purposes, that were shown you in your direct examination, you never saw before?

A. I seen one at the last examination I was at.

X Q. 218. Did you ever use anything like that yourself?

A. I never did.

X Q. 219. You don't know, of your own knowledge, how the device like Exhibit C, that has been marked in this case, operates on a horse, do you?

A. Yes, it makes them spread, and keeps them from interfering and cutting the fetlock joint.

X Q. 220. Did you ever put one on a horse?

A. Yes.

X Q. 221. Where?

A. 1515 Market street.

X Q. 222. When?

A. Twenty-five or thirty years ago.

X Q. 223. Whose horse did you put them on?

A. I don't know; I put them on at Chestnut's order.

X Q. 224. Is that the nearest you can come to it when you put them on a horse?

A. Yes.

371 X Q. 225. Twenty-five years ago?

A. About that time.

X Q. 226. Do you remember when Abraham Lincoln was killed?

A. I do.

X Q. 227. With reference to that time, when was it that you seen one of these things put on a horse like Exhibit C?

A. It was some time before that. It might have been some time after that. I guess I have put them on since that. I think Abraham Lincoln was killed on the 19th of April, 1865; that is impressed on my memory.

X Q. 228. Then you cannot fix any year, can you?

A. I cannot.

X Q. 229. And you can give the name of nobody in that connection, excepting Chestnut?

A. He is the only man that I can think of to-day. I will have to hunt round and find some of them.

X Q. 230. You said that in your last examination, did you not?

A. I said I could perhaps find some.

X Q. 231. Did you not think you would be called again in this case?

A. Yes.

X Q. 232. Then why did you not make inquiries in the meantime?

A. I did not think anything of that.

X Q. 233. As matter of fact, have you made any inquiries in the meantime more than you knew then?

A. Not at all any more than I knew then. I am not interested.

X Q. 234. You never saw them in the shop of any harness-maker's stock?

A. I do not suppose I have been in any other harness-maker's shop, except one, for fifteen years.

372 X Q. 235. What one was that?

A. Benjamin Sage.

X Q. 236. Did you not frequently go into Heidrick's harness shop, your neighbor?

A. I never was in his shop but twice in my life.

X Q. 237. You never kept such a thing as Exhibit C in the stock of your father's store, did you?

A. No.

X Q. 238. And when you made that, or a thing like this Exhibit C for Mr. Lee, you drew upon your memory of what you had done thirty years ago, did you not?

A. I did; not when I made it for him, but when I first seen his boot I told him that I had seen the thing and made it thirty years before.

X Q. 239. And yet you bought his boot?

A. Certainly.

X Q. 240. And you bought the Haughey boot?

A. I did.

X Q. 241. And you handled them in your store?

A. Yes.

X Q. 242. And you cannot recall——

A. No incidence relating to it.

X Q. 243. But when you say they were publicly used, you mean the only knowledge of public use you had was what you have stated in this testimony?

A. Yes, exactly.

X Q. 244. And you have stated that fully?

A. I believe so.

373 Redirect examination.

By Mr. HUNTER:

R. D. Q. 245. What is the age of your father?

A. Father, I think, now is in his ninetieth year.

R. D. Q. 246. When you made the first one of these two devices, like Exhibit C for Mr. Lee, did you receive any suggestions from Mr. Lee as to how it was to be made, in regard to shape and form?

A. No; I told him long before that that it was an old-fashioned idea, and that I could make one out of a piece of hose, and had made them before.

R. D. Q. 247. And you accordingly made one of these devices at his request?

A. Yes.

R. D. Q. 248. Without any suggestion from him as to its shape or form?

A. Except as to a piece of hose.

R. D. Q. 249. This device was Chestnut's idea originally, was it not?

A. Yes, sir.

R. D. Q. 250. Did he tell you what he wanted the boots for?

A. Certainly.

R. D. Q. 251. Did you make them more than once during this period that you made them for Chestnut?

A. Yes, I had made several dozens, perhaps.

R. D. Q. 252. And it was during a period of several years?

A. Yes, sir.

R. D. Q. 253. He ordered them from time to time, when he needed them?

A. As he had a horse to put them on.

R. D. Q. 254. Was it a custom at that time to make a memorandum on your books of special orders like this?

A. No; none whatever.

374 R. D. Q. 255. When you testified previously that you did not know that you made them for Chestnut, did you mean by that that you did not make them on his order, or that you did not make them for his use?

A. I made them on his order.

R. D. Q. 256. Is there any doubt to-day in your mind as to that

device, marked Exhibit C, being identical with those which you made for Mr. Chestnut?

A. The identical thing.

R. D. Q. 257. You never saw them in use upon a horse, so far as you can remember?

A. I cannot say.

R. D. Q. 258. But you put them on a horse?

A. No, not that kind of a boot, except the one I was talking about some time ago.

R. D. Q. 259. Have you any interest whatsoever, either directly or indirectly, in the issue of this controversy, or in any of the patents involved in it?

A. Not one penny's worth; only the trouble of being bothered here.

Recross-examination.

By Mr. O'Brien:

R. X Q. 260. Mr. Chestnut was a very well-known man in this city, was he not?

A. In his day he was.

R. X Q. 261. How old a man was he thirty years ago?

A. I judge he would be a man of sixty.

R. X Q. 262. He had a large acquaintance here?

A. In those days, yes.

R. X Q. 263. And was known to many of the men living to-day?

A. Yes, in a limited way, in his peculiar branch of business.

375 R. X Q. 264. He was a wealthy man, was he not?

A. I guess he was comfortably fixed.

R. X Q. 265. He went out of business and retired?

A. Yes.

R. X Q. 266. And lived upon his income?

A. Lived upon his income; that is, I suppose so; I don't know.

R. X Q. 267. Are you able to give us the name of anybody who would be apt to have the same information that you have as to this boot, marked Exhibit C?

A. Well, I might possibly give you information of somebody. Let me see. (Witness pauses.) I think there is a man by the name of Charles Mullen, who is a driver for Matsinger Brothers, on Race street, below Thirteenth. He had an idea that he seen a boot used when he was a younger man.

R. X Q. 268. When were you talking to him?

A. When they first got up the suit. When we were talking about the Haughey boot, you asked me if I could remember anybody, and I asked him one day, and he said he thought he remembered getting one from Chestnut.

R. X Q. 269. How old a man is he?

A. About my age.

R. X Q. 270. Was he working for Chestnut?

A. No; he was driving; always was driving; his father used to work for Howell Brothers, the paper manufacturers.

R. X Q. 271. Then you did make outside inquiries concerning that device, marked C?

A. Shall I answer that fully?

Mr. O'BRIEN: Yes.

(The WITNESS:) The last time I was examined I tried to find out if I could think of anybody. You asked me the question who had ever used it, and I asked a few of the old men who came to the store, that I knew, if they had seen it, and a few of them thought they had. I never had one to show them, and they said it
376 was quite a common thing for them, when they were younger, to use a piece of hose to dangle on a horse's leg.

R. X Q. 272. You did not show them anything?

A. I did not, because I never made any but those.

R. X Q. 273. And you made it a point to inquire at the time?

A. At your request, to see if I could correct my memory.

R. X Q. 274. Have you got any boot that was ever in use, that you made or anybody else made, that you could show us now like Exhibit C?

A. Do you mean that has been in use?

Mr. O'BRIEN: Yes, sir.

The WITNESS: No.

R. X Q. 275. You have not any old ones around?

A. No, sir.

R. X Q. 276. Did you ever see an old one?

A. That I can't tell.

Redirect examination.

By Mr. HUNTER:

R. D. Q. 277. When you asked these men whether they remembered ever having seen this boot, as you have testified, you described it generally to them, did you not?

A. Yes, sir.

R. D. Q. 278. And some of them said that they thought they remembered having seen such a thing?

A. They did.

(Signed) HENRY DEAMER.

Adjourned to Thursday, March 27th, at 10 a. m.

377 HAUGHEY *vs.* LEE *et al.*

MEETING, *March 28th*, 1890.

Present: Mr. O'Brien and Mr. Bliss, for plaintiff; Mr. Hunter, for defendants; Mr. Shaw, special examiner and stenographer.

CHARLES B. MULLIN sworn.

By Mr. HUNTER:

Q. 1. What is your name, age, residence and occupation?

A. Charles B. Mullin; forty-eight years; 120 Jacoby street; driver.

Q. 2. Are you acquainted with an interfering horse boot, employing a leg strap and a pendant or hanging part hanging from the leg strap, made of a series of rubber balls?

A. I am.

Q. 3. When did you first see such a boot?

A. The boot with the gum balls attached to it about two or three years ago. I don't know, but somewhere in that neighborhood.

Q. 4. Prior to this time, had you ever before seen a horse boot employing a leg strap and a hanging or pendant portion?

(Objected to as incompetent, under the pleadings in this case.)

A. Yes, sir.

Q. 4. When and where did you first see such a boot?

A. In Mr. Deamer's harness store.

378 Q. 5. How long ago?

A. About twenty years ago.

Q. 6. Was the boot similar in general appearance to this boot which I now show you?

A. Something similar to that.

(The boot shown the witness is the one entered as an exhibit in this case, and marked Exhibit C.)

Q. 7. Did you see more than one of these boots?

A. I do not know how many he had. He had five or six; along there. He was making them at the time I seen him.

Q. 8. Did you ask him for whom he was making them?

A. I asked him at first what they were for, and he said they were an interfering boot; and then I asked him who he was making them for, and he said, a man by the name of Chestnut.

Cross-examined.

By Mr. O'BRIEN:

X Q. 9. And all this was twenty years ago, was it?

A. All of that, if not more.

X Q. 10. Well, would your best recollection be that it was more than that?

A. It might be more. I could not swear to what year it was, but I know I have been going to Mr. Deamer's store off and on for repairs to harness over thirty years.

X Q. 11. Could it have been as long ago as thirty years?

A. Oh, no; I don't think it was that long. I think it was in that time. I think it was about twenty years ago. I do not think it is

any more. It might be more. I have been driving for this firm twenty-four years.

X Q. 12. Was it before you went driving for this firm?

A. Yes, sir.

379 X Q. 13. Then it was more than twenty-four years ago?

A. It might have been twenty-four years ago. I drove for the Goodwill Fire Company in 1861 and 1862.

X Q. 14. Do you recall if it was while you were with the Goodwill Fire Company?

A. That I could not tell you.

X Q. 15. But you are quite sure it was prior to your working for Matsinger?

A. I have been with Matsinger Brothers twenty-four years last May. Things you pick up when in harness-rooms you cannot carry years back.

X Q. 16. Who did you speak with about these boots?

A. Mr. Deamer.

X Q. 17. Which Deamer, the old gentleman or the young man?

A. The young man, Harry Deamer.

X Q. 18. This was over twenty-four years ago that you had this conversation with him about this Exhibit C?

A. Yes.

X Q. 19. And you say you saw seven or eight of them in stock in Deamer's store?

A. Yes, sir.

X Q. 20. At that time?

A. Yes, sir.

X Q. 21. Do you remember where they were lying?

A. Well, there were two of them in the window, for one thing.

X Q. 22. He appeared, then, to have been carrying them in his regular stock?

(Objected to as incompetent.)

A. From what I seen there, they were hanging in the window, and I suppose they were for sale.

380 X Q. 23. How did you come to speak to him about that at that time?

A. Well, I am a little curious to go into a harness shop when I see anything, and I don't know what it is for, I ask.

X Q. 24. Is that the only reason you had for asking about that, at that time?

A. Well, I wanted to know what they were. I thought they were in regards to horses, and I wanted to know. You are never too old to learn, when you are round horses.

X Q. 25. Did you buy one of them?

A. No, sir; I never used one in my life.

X Q. 26. Did you see them used after you saw them in his store there?

A. No; I don't know as ever I seen them on a horse till I seen this rubber arrangement.

X Q. 27. The rubber *halls*?

A. Yes; I don't know that I ever seen them on a horse.

X Q. 28. The rubber balls, you mean, are those that you have seen within the last couple of years?

A. Yes, sir; them's the ones.

X Q. 29. But you never saw anything like this, Exhibit C, on a horse in your life?

A. I never seen one of them used; no, sir; I told you that.

X Q. 30. And you have been driving in Philadelphia, how long?

A. I have been driving in Philadelphia ever since I was a boy. My father worked for Howell & Bros., paper factory, and I often used to drive his wagon.

X Q. 31. And your business for the last thirty years, at least, has been driving and handling horses, in the city of Philadelphia?

A. Yes, sir; in the city of Philadelphia.

X Q. 32. And every working day you have been engaged in that line of business?

A. Generally that, every day.

381 X Q. 33. Since you were a child?

A. Yes, sir.

X Q. 34. And you stated in your direct testimony, that you were always in the habit of handling horses?

A. Yes, sir.

X Q. 35. And you have stated that you were interested in every new-fangled notion about a horse that came up?

A. Yes, sir.

X Q. 36. That is all true?

A. Yes, sir.

X Q. 37. And that is a fact?

A. Yes, sir; that is a fact.

X Q. 38. And have been so in this city, for the last thirty years?

A. Yes, sir; if I don't know what a thing is, I always ask.

X Q. 39. And you make it a point always to notice any new improvement in horse boots or appliances for horses?

A. Yes; anything that I see I generally see what it is for, or ask what it is for.

X Q. 40. It is your business as a driver and handler of horses?

A. Yes, sir.

X Q. 41. And anything that interests you?

A. Yes, sir; that is it exactly.

X Q. 42. And you never saw a boot like this Exhibit C on a horse in your experience in this city, as you have testified?

A. No; I have never seen a boot on a horse like that. I have seen them made, but I never seen them worn.

X Q. 43. And the only time that you remember having seen them before you seen this Exhibit C was when you saw this lot in Deamer's store?

382 A. That is the only place.

X Q. 44. You know Henry Deamer pretty well, don't you?

A. Yes, sir.

X Q. 45. The young man, I mean.

A. Yes, sir; I went to school with him.

X Q. 46. Did you see his father in the shop at the time that you saw these boots there; you know his father?

A. Yes, sir.

X Q. 47. Did you see his father in the shop there at that time?

A. I don't know whether he was there that day, the day I had reference to these boots that I asked the question about.

X Q. 48. What business did you have in there?

A. I was there after some repairs to my own harness.

X Q. 49. Your business was not with the son at that time?

A. He always had charge of the shop.

X Q. 50. What I mean is, it was not his shop?

A. Not at that time it wasn't.

X Q. 51. Did you not sometimes deal with his father in the shop there?

A. Oh, yes; I would give orders to his father.

X Q. 52. You knew his father very well?

A. Oh, yes.

X Q. 53. In your experience of the last thirty years you have seen a great variety of devices and appliances for spreading horses, and for different purposes upon a horse, have you not?

A. Yes, sir.

383 X Q. 54. Can you recall any particular ones that you have seen within the last twenty years, or since you saw these boots twenty-four years ago in Deamer's shop?

A. Dangled boot, do you mean?

Mr. O'Brien: Yes.

(The Witness:) No, sir; I never seen but one dangled boot, and the one at the present time that is used.

X Q. 55. I mean, have you had your attention called to any other specially?

A. Well, there are all kinds of interfering boots: knee boots, quarter boots, grab-boots, and all of them. I suppose you might enumerate them. I suppose there have been a hundred thousand of them in Philadelphia.

X Q. 56. And they all belong to the same general character of boots in your mind as this one?

A. They are all for the same thing—that is, an interfering boot. A quarter boot is to prevent interfering behind; a knee boot is to keep him from striking his feet; and a quarter boot is to strengthen his shoes; and an ankle boot is to strengthen his ankles; but that boot is to make a horse wide so that he won't strike himself; that is the object of that boot (referring to Exhibit C).

X Q. 57. Did you ever have a horse that needed something to make him travel wide?

A. I never had a horse to have an interfering boot since I have been driving horses. I always went to the blacksmith and got them fixed before I put a boot on.

X Q. 58. This time that you say you can recall over twenty years ago, the occasion upon which you recall seeing seven or eight of

these boots in Deamer's shop window, do you remember what you went there for?

(Objected to as a misstatement.)

A. I don't know that I can now say what I went there for. I went there for repairs to harness, but I could not tell you what it was for. I said I seen two boots, or what you call a pair of boots.

X Q. 59. Can you not fix the year?

A. No, sir; I cannot.

384 X Q. 60. Why do you say that it was before you went to work for Matsinger & Co.?

A. My goodness, don't I know. I ought to know when I worked, and where I worked, and what I do.

X Q. 61. Do you remember everything that happened in the last twenty or twenty-five years?

A. I recollect a great many things that has happened.

X Q. 62. Was there any special circumstance to fix in your memory that you had incident-ly seen a boot similar to this Exhibit C twenty-four years ago in Henry Deamer's shop?

A. Only I seen them getting made, and I asked him the question what they were being made for, and he told me that it was an interfering boot.

X Q. 63. You remember that distinctly?

A. Yes.

X Q. 64. What were you called there for?

A. To get some harness repaired. I never go to a harness-maker's unless I have some business there.

X Q. 65. Who did the harness belong to that you took to have repaired?

A. The Goodwill Fire Company. The Goodwill Fire Company dealt with Henry Deamer, same as Matsinger.

X Q. 66. What was the piece of harness that you carried there?

A. That is only foolishness, that. I cannot tell you. It might have been a breeching strap or a hip strap, or a trace, or a belly-band; it might have been a bridle, for all I know. I could not enumerate such things as that.

X Q. 67. What was it?

A. I cannot tell you. If you can recollect twenty-four years back what a certain strap was you took to a harness shop you have got a pretty good memory.

X Q. 68. Are you sure that the harness you took there to be repaired was for the Goodwill Fire Company?

A. Yes; I am sure.

385 X Q. 69. But you don't know what it was?

A. No.

X Q. 70. You don't know who sent you there?

A. Myself. I had no boss. I was hired by the Goodwill Fire Company, and when things wanted repairing, I got them mended.

X Q. 71. Who was in the shop besides Henry Deamer and yourself?

A. Some workmen.

X Q. 72. Did you know any of them?
A. No, sir; never knowed a man by name since I went there.
X Q. 73. What time of the year was it?
A. That I don't know.
X Q. 74. Was it in the summer time or the winter time?
A. I couldn't tell you.
X Q. 75. What time in the day was it, if you can recall?
A. I generally used to make it a habit to go over in the mornings if I had anything broken.
X Q. 76. Can you say what time of the day it was, from your recollection?
A. No, I cannot.
X Q. 77. Could you say whether it was raining or shining at the time?

(Objected to as irrelevant and immaterial.)

A. That I couldn't tell you.
X Q. 78. How long were you and Henry Deamer talking about that Exhibit C, or something like it, if you remember?
A. It would not take five minutes to talk about that thing.
X Q. 79. Was there anything special to fix it on your memory?
A. Only that I seen it there, and asked the question what it was for. Why, I made a boot like that with a little bit of chain,
386 three links, to keep a horse from kicking himself. Here, gentlemen, I would like to get to my place of business. It is no interest to me, not a bit.
X Q. 80. Did you speak to any person about having seen this in Deamer's place twenty-four years ago?
A. No, sir; I never said a word to anybody about it.
X Q. 81. Why did you not ever mention it to anybody?
A. I did not think it was any of my business; I wasn't selling harness.
X Q. 82. Did you not ever mention it afterwards to Henry Deamer?
A. No, sir.
X Q. 83. Never had any talk with him about it at all?
A. No; never had a word about it; never knowed it was a patent. I have seen dozens them, though, since on horses.
X Q. 84. Have you not been talking with Lewis Lee, or some of the defendants in this suit?
A. No, sir; I don't know Lewis Lee.
X Q. 85. I mean within the last week or so?
A. No, sir.
X Q. 86. Have you not been talking to Henry Deamer about it?
A. No, sir.
X Q. 87. You never said anything to Henry Deamer about it?
A. Never in my life, except the day I ask- him what it was for.
X Q. 88. And that has been over twenty-four years ago?
A. Yes, sir.
X Q. 89. You are positive about that?
A. Yes, sir; I took an oath to that effect.

X Q. 90. And if Mr. Deamer said that you did, he is simply mistaken; is that so?

387 A. Yes, sir; he is simply mistaken. He just simply tells an untruth, if he says so.

X Q. 91. Can you remember when you first went to work for the Goodwill Fire Company, what year it was?

A. I think it was in the fall of 1861. I won't swear positively—no, it was not the fall of '61; it was 1862 and '63 I drove for them; that was it.

X Q. 92. How long did you work for them?

A. I drove for them for two years.

X Q. 93. And you feel perfectly sure that the harness that you took to Deamer's at the time you speak of, in connection with this Exhibit C, was the harness belonging to the Goodwill Fire Company?

A. Certainly.

Redirect examination.

By Mr. HUNTER:

R. D. Q. 94. You frequently went to Deamer's to have harness repaired while you were with the Goodwill Fire Company?

A. Yes, sir; same as I do at Matsinger's.

Recross-examined.

By Mr. O'BRIEN:

R. X Q. 95. But you only saw this Exhibit C, or, rather, one like it, on one occasion?

A. Only on one occasion, and that was on the day I asked.

(Signed) CHAS. B. MULLIN.

Defendants close.

MARCH 28TH, 1890.

I hereby certify that the foregoing depositions on behalf of the defendants, from page sixteen to page two hundred and fifty-one, inclusive, were taken before me, a notary public, acting as special examiner under a stipulation between counsel in the cause, at the office of E. H. Hunter, Esq., 926 Walnut street, Philadelphia; that the same were reported by me stenographically, and reduced to writing; and that the same are a correct transcript of my notes, which were taken at eight meetings held in the cause.

WM. A. SHAW,
Notary Public.

[SEAL.]

388 HAUGHEY *vs.* LEE *et al.* } No. 10. Oct. Sess., 1889, C. C. U. S.

BUSCH PATENT. W. A. S., N. P. & Sp. Ex.

389 UNITED STATES PATENT OFFICE.

CHARLES L. BUSCH, of Philadelphia, Pennsylvania, assignor to Walter Lee, of same place.

Horse-boot.

Specification forming part of Letters Patent No. 423,854, dated March 18, 1890; application filed September 16, 1889. Serial No. 324,069. (No model.)

To all whom it may concern:

Be it known that I, Charles L. Busch, of the city and county of Philadelphia, and State of Pennsylvania, have invented an improvement in interfering devices for horses, of which the following is a specification:

My invention relates to interfering devices or trotting-balls for horses; and it consists of certain improvements which are fully set forth in the following specification, and shown in the accompanying drawings, which form a part thereof.

The object of my invention is to produce a convenient and efficient apparatus for the purpose of preventing the kicking or striking of a horse by itself during motion. Many trotting horses carry their feet closely together and during rapid motion are liable to strike one leg with the hoof of the other, often causing a serious injury. To prevent this, trotting balls or interfering apparatus have been devised, which are attached upon one leg of the horse and are adapted to strike the other leg if the two legs are brought too close together. In this manner the horse to avoid having his leg constantly struck by the interfering device is compelled to carry his feet farther apart.

It has been sought to construct an interfering device consisting of a swinging part, which while the horse is motionless shall normally assume a perpendicular or approximately perpendicular position, but during the rapid motion of the horse shall be caused to swing out for the purpose of striking the leg. To this end a pendant of rubber or wooden balls has been employed loosely jointed in a perpendicular position to a strap secured to the leg of the horse. This loose joint, however, does not in practice accomplish the desired object effectively, as the tendency of the pendant secured in this manner is to swing in a perpendicular plane, and not out or away from the leg into an approximately horizontal plane, as is desired, and also to strike the leg to which it is attached, as well as the opposite leg, thereby confusing the horse.

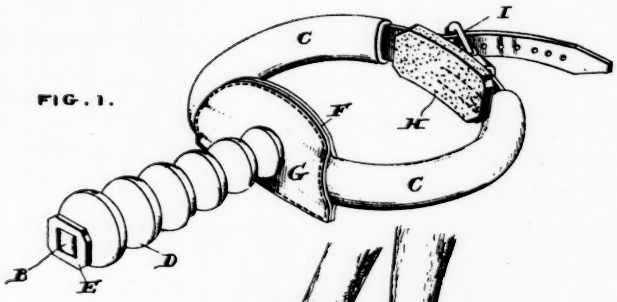
(No Model.)

C. L. BUSCH.

HORSE BOOT.

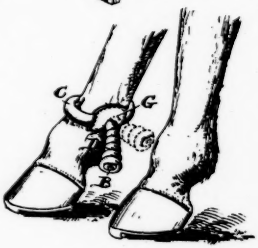
No. 423,854. Patented Mar. 18, 1890.

FIG. 1.



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FIG. 3.



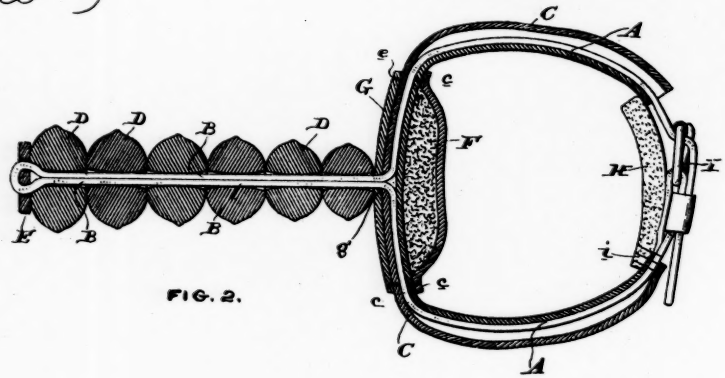


FIG. 2.

WITNESSES:
David S. Williamson
Henry Dewey

INVENTOR:
Charles L. Busch
by his Attorney

It is the object of my invention to overcome this fault by employing a striker or projecting portion so supported that during the motion of the horse it will of necessity swing in a substantially horizontal plane and cannot strike the leg to which it is attached. This object I accomplish by the improvements hereinafter more fully disclosed and described.

My invention furthermore consists of certain improvements in the construction and arrangement of the parts whereby greater efficiency of operation and economy of manufacture are obtained.

(Here follows diagram marked page 388.)

In the drawings, figure 1 is a perspective view of my improved interfering device. Fig. 2 is a sectional plan view of the same, and Fig. 3 is an illustrative view showing the arrangement and operation of the same when attached to the horse.

A is a strap or band formed with a loop B at about its middle.

C is a covering of flexible material—such as rubber tubing—inclosing the strap or band A and having an opening through which the loop B extends.

D are a series of balls of rubber or wood loosely strung upon the loop B to form the striker, and supported thereon by a pin or bit of leather or other material E, through which the loop B of the strap is passed. While I prefer to form the striker in this manner by means of the wooden or rubber balls D, it is apparent that it may be formed in any other convenient manner and of any suitable material, as my invention is not in any way limited to the particular construction of the striker itself.

F is a pad or cushion secured to the flexible covering C and adapted to rest against the leg of the horse. I prefer to construct this pad F with a shield G, having an opening *g* at its center, and to arrange the flexible covering C and strap A between the pad and the shield, with the loop forming the striker extending through the hole *g*, in the manner shown in the drawings. This gives greater firmness and affords a better support for the striker. The pad is secured to the covering C by stitches *c*, the strap A being free.

It is apparent that in place of making the flexible cover-
390 ing in one piece extending through the pad, as shown, it may be made in two sections, each having its end secured to the pad by the stitches *c c*.

H is a cushion or pad of soft material secured to the end of the covering C to protect the leg of the horse from contact with the buckle I upon the end of the strap A, by which the device is attached to the animal. The end of the strap A carrying the buckle I is secured to the flexible covering C by stitches *i*, and the strap from this point throughout its entire length is free. The advantages of this construction are manifold. The striker being formed on a part of the continuous strap A may be tightened or loosened and lengthened or shortened at will, and may be kept always projecting, so as not to depend and strike the leg which carries it. The tendency of the striker during the motion of the horse is to swing

out into a horizontal plane, because at the opening *g* the least resistance is presented against this motion, or on the two sides where the force acts directly through the length of the strap A. By employing the outer covering C the strap A at no point comes into direct contact with the leg of the horse, so that the swinging of the striker does not produce a rubbing or chafing of the leg by reason of any motion that may be imparted to that portion of the strap encircling it, and the device may be tightly secured without inconvenience to the animal.

The apparatus is constructed without the use of metal, except for the buckle, and of fewer parts than are ordinarily employed, whereby it may be more economically manufactured and will possess greater durability.

I hold myself entitled to any variation or change in details which falls within the scope of my invention.

Having now described my invention, what I claim as new, and desire to secure by letters patent, is—

1. In an interfering device for horses, the combination of a leg-strap for attachment to the leg of the horse, and a guide piece supported by said leg-strap, through which a portion of the leg-strap extends with freedom of motion, said leg-strap being passed through an opening in the guide piece and forming a laterally-projecting striker, whereby the same may be tightened to take up any slack therein by tightening the leg-strap passing through the guide piece.

2. An interfering device for horses, consisting of a strap encircling the leg of the horse and having a portion of its length formed into a loop, and devices carried by said looped portion to form a laterally-projecting striker adapted to swing out and strike the other leg of the horse to prevent interfering.

3. In an interfering device, the combination of a tubular piece adapted to encircle the leg of a horse, a strap extending throughout said tubular piece and having a swinging portion projecting through a hole in the side of said tubular piece, adapted to form a swinging striker to strike the other leg of the horse and prevent interfering, whereby said strap does not come directly in contact with the legs of the horse.

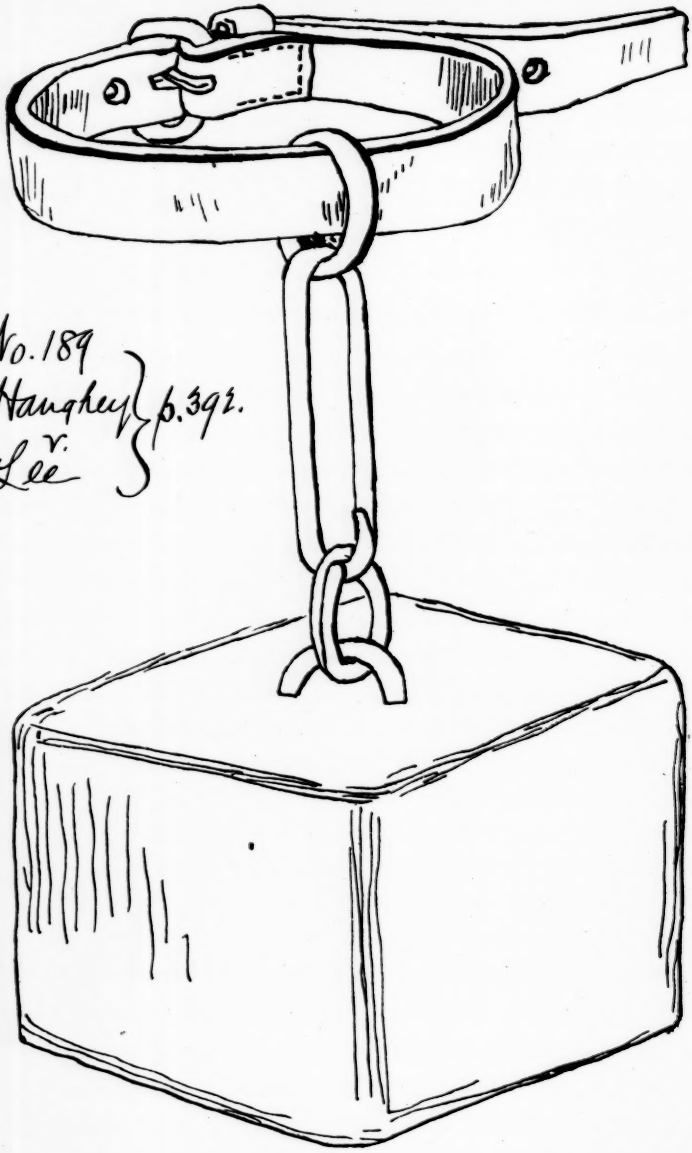
4. In an interfering device, the combination of a tubular piece adapted to encircle the leg of a horse, a strap extending throughout said tubular piece and having a swinging portion projecting through a hole in the side of said tubular piece, adapted to form a swinging striker to strike the other leg of the horse and prevent interfering, whereby said strap does not come directly in contact with the legs of the horse and pads carried by said tubular piece.

5. In an interfering device, the combination of a tubular piece adapted to encircle the leg of a horse, a strap extending throughout said tubular piece, attached to it at one end only, and having a

Deft's Exhibit
"Stewart Drawing"
W.A.S.
N.P. Sh. Ex.

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v.
Lee

Defts Exhibit
"Drawing of Gilbert-Device"
Was.
N.O. & Sh. Ex

swinging portion formed by a loop in the length of said strap projecting through a hole in the side of said tubular piece, adapted to form a swinging striker to strike the other leg of the horse and prevent interfering, whereby said strap does not come directly in contact with the legs of the horse.

In testimony of which invention I have hereunto set my hand.

CHARLES L. BUSCH.

Witnesses:

ERNEST HOWARD HUNTER.
S. T. YERKES.

(Here follow drawings marked pages 391 & 392.)

393 RESPONDENTS' EXHIBIT DICKINSON 1879 PATENT. W. A. S., N. P. & Sp. Ex.

394 UNITED STATES PATENT OFFICE.

CHARLES B. DICKINSON, of Brooklyn, New York.

Improvement in Interfering-straps.

Specification forming part of Letters Patent No. 220,585, dated October 14, 1879; application filed August 27, 1879.

To all whom it may concern;

Be it known that I, Charles B. Dickinson, of Brooklyn, in the county of Kings and State of New York, have invented certain new and useful improvements in interfering-straps; and I do hereby declare that the following is a full, clear, and exact description of the invention, which will enable others skilled in the art to which it appertains to make and use the same, reference being had to the accompanying drawings, and to the letters of reference marked thereon, which form a part of this specification.

This invention relates to ankle-boots or interfering-straps; and it consists in the combination and arrangement of parts, as will be hereinafter more fully set forth, and pointed out by the claim.

In the annexed drawings, which fully illustrate my invention, figure 1 is a side elevation of my device open, and Fig. 2 a similar view of the same closed.

(Here follows diagram marked page 393.)

Like letters of reference indicate like parts.

A represents the strap, provided with a suitable fastening device, *a*, and part B extending out on a level with the edges of the same. C represents projections on the inner side of the strap, and D represents loops on the outer side.

The loops are soft and yielding, and, when struck by the horse's foot or leg, cause him to spread his gait, and, being soft and pliable, cannot injure the leg upon which it is fastened or the one striking it, as is now the case with interfering-straps or boots now in use.

The projecting bars on the inside serve to keep the boot or strap away from the leg, admitting of a free circulation of air, and also allowing the gravel or dirt which may be picked up to fall through, thereby preventing the leg from becoming sore by the gravel or dirt being pressed into the leg by striking the boot.

By this arrangement, in addition to the advantages set forth, a strap or boot is produced that combines lightness, neatness, durability, and effectiveness, and one that can be cheaply constructed.

Having thus fully described my invention, what I claim as new, and desire to secure by letters patent, is—

C. B. DICKINSON.
Interfering-Straps.

No. 220,585. Patented Oct. 14, 1879.

Fig. 1.

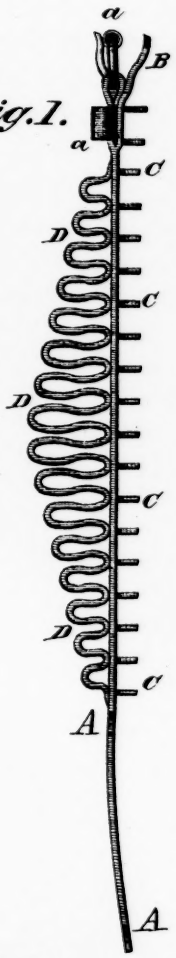
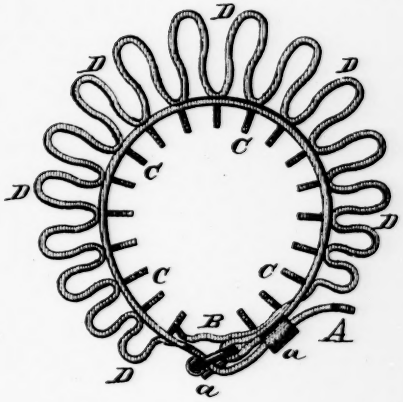


Fig. 2.



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Witnesses:
P. Dieterich
Jno. A. Stockman

Inventor
Chas. B. Dickinson.
Per C. H. Watson & Co
Attorneys.

An ankle-boot or interfering-strap having strap A, with projections C, placed around the entire inside, and separate flexible loops D on the outside thereof, and provided with a suitable fastening device, substantially as and for the purpose set forth.

In testimony that I claim the foregoing as my own I have hereto affixed my signature in presence of two witnesses.

C. B. DICKINSON.

Witnesses:

WILLIAM HUGHES.
JAMES TROY.

JOHN J. DAVY, of Newark, New Jersey.

Letters Patent No. 61655, dated January 29, 1867.

Bristle Boot for Horses.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, John J. Davy, of Newark, in the county of Essex, and State of New Jersey, have invented a new and improved bristle boot for horses; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawings, forming part of this specification, and in which—

(Here follows diagram marked page 395.)

Figure 1 represents a plan or top view of this invention.

Figure 2 is a vertical central section of the same.

Similar letters of reference indicate like parts.

This invention consists in a strap provided with radiating bristles made from hair, or other suitable material, in such a manner that a boot for horses is obtained which is easily applied and removed, and which is not liable to wear out.

In order to cure horses from interfering with their legs, it is a common practice to wrap round the ankles of their legs small ribbons made of straw, from which project some of the straws in a radial direction, so that the horse will feel it when he brings one leg close up to the other, and by these means he is cured from the habit of interfering. These straw boots wear out very quickly, and have to be renewed so often that it requires much time and labor to keep them in order. These disadvantages are obviated by my bristle boot, which consists of a strap, A, with a suitable buckle or fastening, B, and from the strap radiate a series of bristles, C, made of hair or other suitable material, such as broom corn, rattan splints, fine steel wires, or similar stiff and elastic substances. By the radiating bristles the horse is effectually prevented from bringing one leg close up to the other; the bristles prick or tickle him without producing any injury, and a perfect cure is effected in a short time. My bristle boots are readily applied, and not liable to wear out for a long time.

What I claim as new, and desire to secure by letters patent, is—

A bristle boot for horses composed of a strap A, with radiating bristles C, as a new article of manufacture.

JOHN J. DAVY.

Witnesses:

WM. F. McNAMARA,

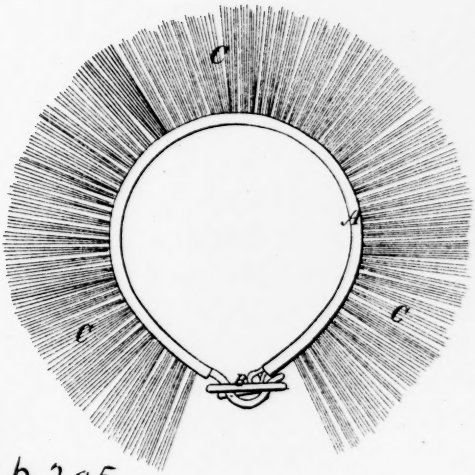
ALEX. F. ROBERTS.

J. J. Davy,

Horse Boots.

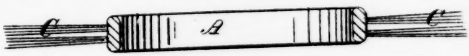
No. 61,655. Patented Jan. 29, 1867.

Fig. 1.



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Fig. 2.



Witnesses
Fred Fisch
J. A. Service

Inventor.
John J. Davy
Per Munn & Co
Attorneys

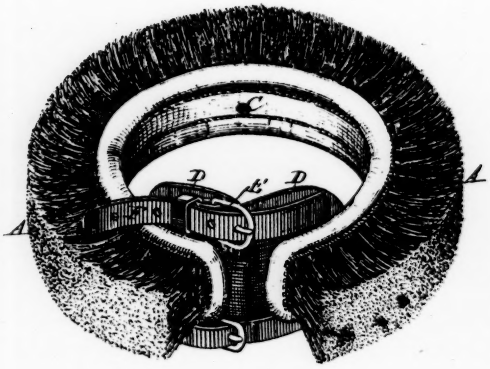
(Model.)

J. YOUNG, Jr.

HORSE BOOT.

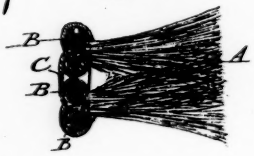
No. 250,771. Patented Dec. 13, 1881.

Fig. 1.



No. 189
Vaughen } p. 397
v.
Lee

Fig. 2.



Witnesses.

Sidney P. Hollingsworth

Walter S. Dodge.

Inventor.

Jefferson Young Jr.
By P. T. Dodge
atty.

397 RESPONDENTS' EXHIBIT YOUNG 1881 PATENT. W. A. S., N. P. & Sp. Ex.

398 UNITED STATES PATENT OFFICE.

JEFFERSON YOUNG, JR., of Brooklyn, New York, assignor to Henry L. Butler, Jr., and William H. Goldey.

Horse-boot.

Specification forming part of Letters Patent No. 250,771, dated December 13, 1881. Application filed April 20, 1881. (Model.)

To all whom it may concern:

Be it known that I, Jefferson Young, Jr., of Brooklyn, in the county of Kings and State of New York, have invented certain improvements in horse-boots, of which the following is a specification.

This invention relates to a horse-boot designed to prevent and cure the habit commonly known as "interference." Many boots have been designed for this purpose, but as hitherto made they have been open to one or another of the various objections that they turn upon the foot, that they would chafe the opposite leg or fetlock of the animal, and that when wet they lost shape and stiffness, and became practically useless.

The object of this invention is to produce an exceedingly light horse-boot for use in curing the habit commonly known as "interference," the design being to produce a boot which being applied to one foot shall slightly touch the other when the two are brought too near each other, and to adapt this boot for successful use when subjected to moisture.

The invention consists in various details of construction, hereinafter described, consisting mainly in braiding the manila upon tarred marline, and covering the latter with leather or felt.

Referring to the accompanying drawings, figure 1 represents a perspective view of my boot; Fig. 2, a cross-section of the same.

(Here follows diagram marked page 397.)

A represents the manila or fibrous material; B, the tarred rope or marline upon which the same is braided; and C, the leather or felt arranged upon the inside of and covering the marline.

D represents the widened ends of the leather, and E buckles attached to one end of the leather, and engaging with the straps upon the opposite end of the same, whereby the boot may be fastened snugly around the leg or foot of the animal.

The manner in which the fiber is braided around the marline is clearly represented in the cross-section. It will be seen that the fibers radiate or stand outward around the exterior of the boot, and that they form a thick brush-like mass.

In use the boot will touch the opposite foot of the animal lightly,

and with just sufficient force to cause the animal to separate his feet, the animal being in this manner trained to carry his feet in the proper position without the danger of having the foot chafed or cut, or of having his gait destroyed by the application of excessive weight, as is the case with the leather boots.

The right to take a future patent covering the boot constructed of manila fiber is hereby reserved.

Having thus described my invention, what I claim is—

1. In a horse-boot, the combination of the rope or marline, the fiber braided thereon, and attaching devices, substantially as described and shown.

2. The combination of the rope or marline, the fiber braided thereon, and a leather covering applied thereto, in the manner described and shown, and provided with fastening devices.

3. The horse-boot consisting of the brush-like body, and the interior supporting-strip, having its ends widened in the manner described and shown, and provided with fastening devices.

JEFFERSON YOUNG, JR.

Witnesses:
W. H. MURPHY.
WM. W. CAIN.

and with just sufficient force to cause the animal to separate his feet, the animal being in this manner trained to carry his feet in the proper position without the danger of having the foot chafed or cut, or of having his gait destroyed by the application of excessive weight, as is the case with the leather boots.

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3. The horse-boot consisting of the brush-like body, and the interior supporting-strip, having its ends widened in the manner described and shown, and provided with fastening devices.

JEFFERSON YOUNG, JR.

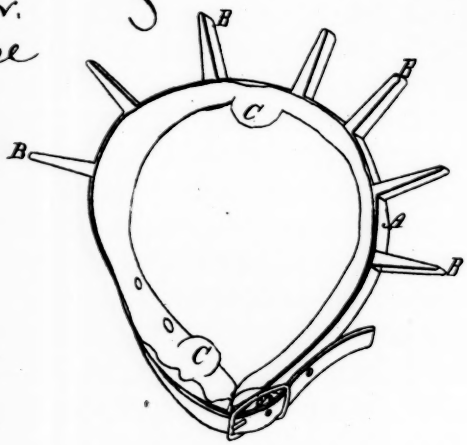
Witnesses:
W. H. MURPHY.
WM. W. CAIN.

Hall & Clifford,

Horse Boots.

No. 81,998. Patented Sep. 8, 1868.

No. 189
Haughen
v.
Lee
} p. 399.



Witnesses
Leopold Bauer
A. A. Seaman

Inventors
Wm. H. Hall
John C. Clifford
per Alexander Wilson
& Sons

399 RESPONDENTS' EXHIBIT HALL & CLIFFORD 1868 PATENT. W. A. S., N. P. & Sp. Ex.

400 UNITED STATES PATENT OFFICE.

WILLIAM H. HALL and JOHN R. CLIFFORD, of Boston, Massachusetts.

Letters Patent No. 81998, dated September 8, 1868.

Improved Anti-interfering Band.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that William H. Hall and John R. Clifford, both of Boston, in the county of Suffolk, and in the State of Massachusetts, have invented certain new and useful improvements in anti-interfering bands; and do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon.

The nature of our invention consists in the combination of kersey, felt, or its equivalent, with a rubber anti-interfering band for horses' legs, whereby the moisture from the leg is absorbed, and the band does not chafe or stick to the leg, as all other bands now in use do.

In order to enable others skilled in the art to which our invention appertains to make and use the same, we will now proceed to describe its construction and operation, referring to the annexed drawings, which form a part of this specification.

(Here follows diagram marked page 399.)

A represents a rubber band for horses' legs, provided on the outside with projections B B, and made in any of the known and usual ways.

This band is, on the inside, provided with balls or pads C C, to keep it in its place, and prevent it from turning around.

The whole inner side of the band A is lined with kersey, felt, or its equivalent, all vulcanized in one process in a mould, by combining the two together, and the edges rounded, as shown.

This gives strength to the strap and buckle riveted to the ends of said band, as, without it, the rivets would easily work through the rubber. It absorbs the moisture, and prevents any chafing.

Having thus fully described our invention, what we claim as new, and desire to secure by letters patent, is—

As an article of manufacture, an interfering rubber guard, when

constructed as described, and attached to kersey, as herein shown and for the purposes set forth.

In testimony that we claim the foregoing, we have hereunto set our hands and seals, this 29th day of July, 1868.

WILLIAM H. HALL. [L. S.]
JOHN R. CLIFFORD. [L. S.]

Witnesses:

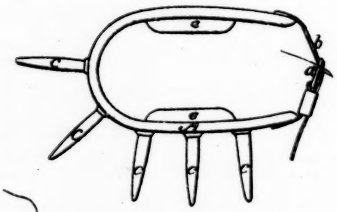
SELWIN Z. BANMAN.
BENJ. H. CURRIER.

H. A. Hall,

Horse Boots.

No. 77,728. Patented May 12, 1868.

Fig. 1.



No. 189
Haughey
v.
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} 2. 401

Fig. 2



Witnesses.

H. P. Hall Jr.

J. R. Snow.

Inventor:
H. A. Hall

by his attorney
R. H. Eddy

401 RESPONDENTS' EXHIBIT HALL 1868 PATENT. W. A. S., N. P. & Sp. Ex.

402 UNITED STATES PATENT OFFICE.

HENRY A. HALL, of Boston, Massachusetts.

Letters Patent No. 77728, dated May 12, 1868.

Improved Ankle or Knee-Guard.

The schedule referred to in these letters patent and making part of the same.

To all persons to whom these presents may come:

Be it known that I, Henry A. Hall, of Boston, in the county of Suffolk, and State of Massachusetts, have invented an improved ankle or knee-guard for the leg of a horse; and do hereby declare the same to be fully described in the following specification, and represented in the accompanying drawings, of which—

(Here follows diagram marked page 401.)

Figure 1 is a top view, and

Figure 2 a side elevation of it.

The purpose of my said guard is to prevent the hoof or shoe of a horse, while the animal may be in movement, from contact with and thereby cutting or bruising or otherwise injuring the ankle or knee of the next adjacent leg.

In carrying out my invention, I combine with the band or belt to go around and be buckled or fastened to the leg of a horse, above the ankle thereof, a series of elastic projections or feelers, they being formed and projected from such band or belt in manner as represented in the accompanying drawings, in which—

A denotes the band or belt, provided with a buckle, *a*, at one end, and a strap, *b*, at the other, and also with the series of elastic points, projections, or feelers *c c c*.

I usually cast or make the feelers and band in one piece, of India rubber or its equivalent, which I subsequently vulcanize, but the feelers may be made of that material, and the band or belt may be made of leather or other suitable material.

Furthermore, I generally make the band with two cushions *e e*, arranged so as to project from its inner surface, in manner as represented, such being to enable the band to fit, and keep it from turning around on the leg of a horse, when applied thereto.

When the guard is in use, the elastic feelers will be carried by the striking leg against the other leg of the animal, and, without doing injury thereto, will cause him to keep the striking leg at a proper distance from the other leg, while both are in movement.

Each projection or feeler is to be made so as to be substantially as

flexile in a vertical or oblique as it is in a horizontal direction, it having for this purpose a vertical cross-section. Thus it can play freely in any direction in which, when in use, it may be likely to be moved by contact with the leg of the horse. This is very important, for, if made as represented in the United States patent, No. 60687, dated January 1, 1867, that is, as a triangular prism set up edgewise, it has no flexibility in vertical direction in comparison with what it has in horizontal directions; in other words, it is so comparatively stiff or rigid in vertical directions as to render it dangerous, or very liable, when in use, to do injury to the leg of the horse.

Besides the device represented and described in such patent is a hoof-pad, it being intended to be worn on the hoof of a horse, whereas my ankle or knee-guard is intended to be worn on that part of the leg which is above the ankle, and it has two cushions to its band, such cushions being to fit into the opposite cavities of the leg.

I therefore make no claim to the invention described in the aforesaid patent; but

What I claim, and desire to secure by letters patent, is—

As a new article of manufacture, an ankle or knee-guard, in which the band or belt is provided with a series of independent and separate feelers of vulcanized rubber, constructed or formed in the manner herein shown and specified, so that each feeler shall be uniformly flexile in various directions.

H. A. HALL.

Witnesses:

R. H. EDDY.

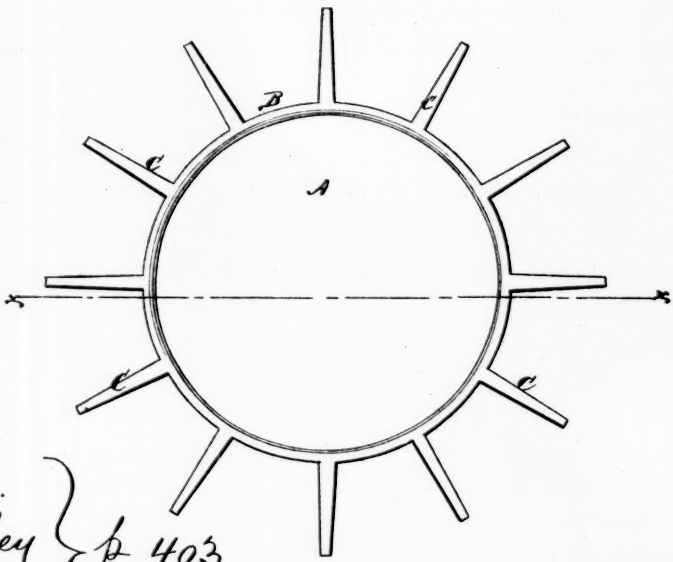
F. P. HALE, JR.

A. D. WESTBROOK.

Interfering-Boot for Horses.

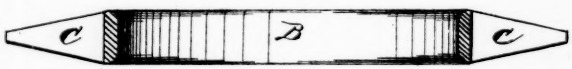
No. 160,248. Patented Feb. 23, 1875.

Fig: 1.



No. 189.
Haughey
v.
Lee
} p 403

Fig: 2.



Witnesses:
H. L. Gattenberg
W. F. Lovell

Inventor:
Abraham D. Westbrook
per Chas. Thompson
Atty

403 RESPONDENTS' EXHIBIT WESTBROOK 1875 PATENT. W. A. S., N. P. & Sp. Ex.

404 UNITED STATES PATENT OFFICE.

ABRAHAM D. WESTBROOK, of Astoria, New York.

Improvement in Interfering-boots for Horses.

Specification forming part of Letters Patent No. 160,248, dated February 23, 1875; application filed June 23, 1874.

To all whom it may concern:

Be it known that I, Abraham D. Westbrook, of Astoria, in the county of Queens and State of New York, have invented a new and improved interfering-boot for horses; and that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings, and to the letters of reference marked thereon, making a part of this specification.

This invention is in the nature of an interfering-boot for horses; and the invention consists in an elastic annulus, constructed with elastic spurs around its periphery, substantially as hereinafter described.

It is well known that one of the chief difficulties encountered in using interfering-boots is, that the interfering foot is apt to displace the boot, leaving the ankle exposed. Another difficulty is, that the boots provided with straps are, when applied by inexperienced hands, frequently strapped so tightly as to interfere with circulation in the horse's ankle, and cause swelling, &c. These objections are, it is believed, fully obviated by my invention, as will be seen from the following description and accompanying drawings, wherein—

(Here follows diagram marked page 403.)

Figure 1 is a plan view of my invention; and Fig. 2 is a cross-section of same, taken in the line *x x*, Fig. 1.

Similar letters of reference indicate like parts in the two figures.

A represents an interfering-boot for horses. This boot is made from india-rubber or other suitable elastic material, and is in the form of an unbroken annulus, B. Formed with or otherwise secured to the periphery of the annulus B are a series of elastic spurs, C.

My boot being constructed substantially as above described, its operation is as follows: To apply the boot, it is stretched so as to enlarge the annulus sufficiently to permit it to pass over the horse's hoof, up to the ankle or place that is injured by the interfering hoof, where the elasticity of the material from which the boot is constructed retains it in place with an elastic pressure not at all injurious to the horse; and when the interfering hoof comes in contact with the boot it strikes the spurs C, which effectually guard the ankle from injury, and if the boot should turn around the

ankle the spurs, being continuous, will always present themselves to the action of the interfering hoof.

I am aware that interfering pads have been made of rubber, with points projecting therefrom; but such points are applied to a portion only of the band, and hence, when the band slips and the points thus depart from the position of contact, the pad becomes practically useless.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

An interfering pad or boot for horses, composed of an elastic annulus or band, with yielding points projecting from its entire outer surface, substantially as specified.

A. D. WESTBROOK.

Witnesses:

H. L. WATTENBERG.

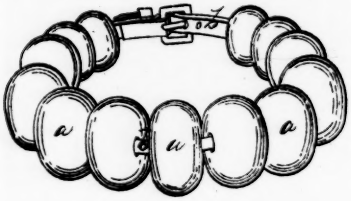
G. M. PLYMPTON.

C. Brinckerhoff,

Horse Boots,

No. 85,205, Patented Dec. 22, 1868

Fig 1



No. 189
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v.
Lee

Fig 2.



Witnesses.

Wm. E. Leyn

W. B. Livingston

Inventor.

Chas. Brinckerhoff

Munn & Co.

Attorneys

405 RESPONDENTS' EXHIBIT BRINCKERHOFF 1868 PATENT. W. A. S., N. P. & Sp. Ex.

406 UNITED STATES PATENT OFFICE.

CHARLES BRINCKERHOFF, of Fishkill, New York.

Letters Patent No. 85205, dated December 22, 1868.

Improved India-rubber Fender for Interfering Horses.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Charles Brinckerhoff, of Fishkill, in the county of Dutchess, and State of New York, have invented a new and improved india-rubber fender for interfering horses; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawings, forming part of this specification, in which—

(Here follows diagram marked page 405.)

Figure 1 is a perspective view of my invention.

Figure 2 is a longitudinal central section taken in the plane of the line *x x*, Fig. 1.

Similar letters of reference indicate like parts.

This invention relates to the production of a new article of manufacture, the same consisting of a number of india-rubber balls secured on a strap, or the like, to be secured around the ankle or leg of the horse which is struck by the opposite hoof, or interfered with in any way, or, indeed, it may be applied to the interfering hoof.

In the drawings—

a a designate a series of solid or hollow rubber balls, which are larger in size near the centre of the strap or cord, and decrease in size toward each end, the same having holes made through their centre, and a strap or strings run through to hold them in place.

This string of rubber balls is secured around the horse's leg, at the point where the hoof strikes against or interferes with the same, or upon the hoof which interferes with the leg.

This simple device will be found very efficient for the purpose for which it is intended, and it will certainly prevent injury to a horse's leg, caused by the hoof striking the same, as can be readily understood.

I am aware that wooden and bone balls have been used for the above purpose before; also, that the application of rubber to the hoof of the horse is not new.

What I claim, is—

The arrangement of a series of perforated, hollow, and flexible rubber balls, *a*, upon a leather strap, *b*, for forming a fender for interfering horses, all as herein shown and described.

The above specification of my invention signed by me, this 24th day of October, 1865.

CHARLES BRINCKERHOFF.

Witnesses:

H. H. HUSTIS.

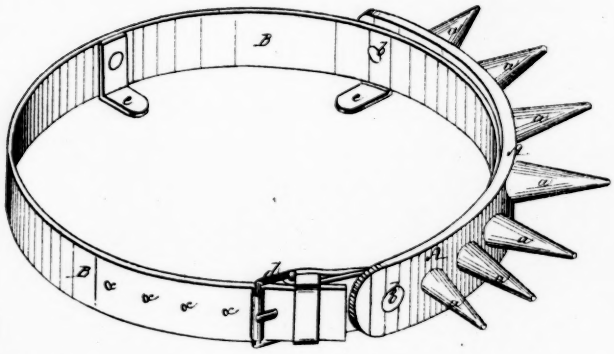
A. J. GILMER.

J. SMITH.

Interfering Pad for Horses.

No. 105,990. Patented Aug. 2, 1870.

Fig. 1


B
a
a
a
a
a
a
a
a
a
B
a
a
a
a
a
a
a
a
a

407 RESPONDENTS' EXHIBIT SMITH 1870 PATENT.

408 UNITED STATES PATENT OFFICE.

JOHN SMITH, of Boston, Massachusetts.

Letters Patent No. 105,990, dated August 2, 1870.

Improvement in Interfering-pad for Horses.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, John Smith, of Boston, in the county of Suffolk and State of Massachusetts, have invented an improvement in interfering-pads for horses, of which the following is a full, clear, and exact description, reference being had to the accompanying drawing making part of this specification, in which—

(Here follows diagram marked page 407.)

Figure 1 is a perspective view of an interfering-pad with my improvement applied thereto.

Figure 2 is a plan of the under side of a horse's hoof with a shoe thereon, and representing the position and manner of securing my improved pad thereto.

Figure 3 is a vertical section through the rear portion of the hoof and shoe, on the line *x x* of Fig. 2.

Interfering-pads for horses, as heretofore made, are objectionable, for the reason that it is difficult to keep them from turning around or slipping up on the hoof after being placed in position.

To overcome these difficulties, the strap or band of the pad has been provided with a single projection or "start," which is pressed in between the upper side of the shoe and the bottom of the hoof, at a point at or near the front of the same, but owing to the "start" occupying such position, it is liable to be brought in contact with various objects or obstacles during the ordinary movements of the horse, and is frequently broken or bent and forced out of place, and the portion of the pad opposite to that where the "start" is placed continually slips up on the inclined surface of the hoof, which causes the band to chafe and to be soon worn out, beside being uncomfortable to the horse.

To provide an interfering-pad which shall effect the desired object and remain permanently in the position in which it is adjusted is the purpose of my invention, which consists in an interfering-pad having two "starts," so arranged as to fit between the shoe and hoof at points at or near the rear or heel-calks, in which position they are not exposed to be struck, and the pad is prevented from "riding

up," and is held securely and permanently after being adjusted to its proper place.

To enable others skilled in the art to understand and use my invention, I will proceed to describe the manner in which I have carried it out.

In the said drawing—

A is a thick strip of rubber, provided with a series of conical projections, *a*, and riveted at *b b* to a leather strap, B, provided with holes *c*, and a buckle, *d*, by which it may be secured around a horse's hoof.

By reference to Fig. 2, it will be seen that the interfering-pad is so applied that the rubber projections *a* point out from the inside of the hoof toward the inside of the next hoof of the same pair of the horse's legs, and, in this position the pad is prevented from slipping up or around by means of two "starts," *e e*, one of which fits between the hoof and shoe, at or near its rear or heel-calk inside the hoof, while the other "start" fits between the hoof and shoe at or near its rear or heel-calk outside of the hoof, by which construction the pad is held snugly down on the hoof, and the "starts" are not in a position to be struck when the hoof comes in contact with the ground.

As hereinbefore mentioned, I disclaim an interfering-pad provided with one "start" only, as I am aware such a pad has been made, but has not been successfully used, as it failed to accomplish the desired end; but

What I do claim as my invention, and desire to secure by letters patent, is—

An interfering-pad, provided with two "starts," *e e*, which fit between the hoof and shoe at or near its rear or heel-calk, when constructed and arranged with respect to the leather strap B, and rubber strip A, provided with projections *a*, substantially in the manner and for the purpose set forth.

Witness my hand this 6th day of June, A. D. 1870.

JOHN SMITH.

Witnesses:

P. E. TESCHEMACHER.

L. E. BATCHELLER.

409 And afterwards, to wit, on the 25th day of April, A. D. 1890, come the parties aforesaid, by their solicitors aforesaid, and this cause being called for argument on final hearing, and having been argued by counsel for the respective parties, *and* the court, not being fully advised in the premises, takes further time to consider thereof.

And afterwards, to wit, on the 9th day of May, A. D. 1890, come the parties aforesaid, by their solicitors aforesaid, and the court, being now fully advised in the premises, files the following opinion, viz:

410 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

HAUGHEY
vs.
LEE and SONS.

BUTLER, *J.*:

The plaintiff sues for infringement of patent No. 379,644, dated March 20th, 1889, "interfering device for horses."

The claim is as follows: "The interfering device consisting of the pendant made of rubber, wood, or other suitable material, loosely jointed to the strap passing around the leg of a horse, substantially in the manner shown and for the purposes set forth."

The answer attacks the patent and denies infringement. To support the former appeal is made to the state of the art.

From this source it appears that interfering devices are of great antiquity and of various forms, all having the same object, protection of the leg and spreading the stride. One of the earliest was the "boot," made of leather or other pliable substance,
411 padded and fitted to the leg, the main purpose of which was to protect the leg. Even this, however, was supposed to exert some influence on the step. Following it came various other contrivances, the dominant object of which was to produce a wider step, called "spreading." All these devices are still employed. Some consist of a strap strung with balls of wood, gum, or other similar material made to buckle around the leg above or below the pastern joint. These balls stand out a little further than the "boot." Others consist of a strap with leather loops attached to the outward side two to five inches long. These loops at first are stiff, standing out horizontally, and are struck more readily than the "boot" or balls. After a little use the loops hang, though not perpendicularly. Others are made of bands of platted straw, of gum pipe, and similarly pliable substances and so fitted to the leg that the two ends form a "striker." It is unnecessary to extend the enumeration. The object in all cases is to protect the leg and induce a wider step. By this means it is sought to cure the vice of interfering. The projection on the strap is called a "striker."

A strap with pendant chain or rope has long been used to prevent kicking in the stall. This is attached to the leg in the
412 same manner as the other devices. The chain is of various lengths—usually a foot or more.

The defendant has also shown (if the testimony is credible) the use of an interfering device made of a strap and pendant striker loosely hung. The witnesses testify to having seen it used at a race-course near Norristown. One witness testifies to having seen a similar device, the pendant being of gum or wooden balls, at the stable of Mr. Hitner, in the same vicinity. One witness, a harness-maker in Philadelphia, testifies that he assisted to make a number of similar devices for a farrier, the strikers of which consisted of gum pipe, illustrated by an exhibit in proof. Another testifies that he saw these in the shop window when made. The witnesses who testify

to the devices used near Norristown speak of a period twenty years past, and the same is true of the witnesses who testify to the Philadelphia device.

The plaintiff called a number of persons familiar with the general subject who say they never saw any such devices. This does not, however, disprove their existence. I should hesitate to disregard the testimony of the plaintiff's witnesses or to accept the suggestion that these devices were experiments merely. Yet I would hesitate to declare the patent invalid on this testimony.

413 The case may be put on safer ground. In view of the other devices shown, about whose existence there is no question, it seems clear that the slight change in form which the plaintiff made did not require invention. He simply altered the "striker" from a horizontal to a perpendicular position. He found it standing out laterally, and loosened it so as to hang. This was all. Surely no invention was required to do it. Any mechanic to whose line the work belonged (or indeed any handy person, though not a mechanic) could do this. The idea or conception that this change might be beneficial was not patentable. The question is simply, Was invention required to make the change? In my judgment it was not. The kicking device exhibited a method of doing it. This device indeed required nothing but shortening the chain to make it correspond in every essential respect with the plaintiff's. Applying this to a horse in motion instead of one standing in his stall is not even a new use. If new it would be analogous to the old. Patents are constantly overturned for want of invention where its absence is not so clear. The later volumes of reports are full of such cases; eight are contained in the last issued, 132 U. S. It is sufficient to cite a few of them: Hollister *vs.* The Manuf. Co., 113 U. S.,

414 59; Thompson *vs.* Boisselier, 114 U. S., 1; Penna. R. R. Co. *vs.* Locomotive Truck Co., 110 U. S., 490; Busby *vs.* Excelsior Manuf. Co., 110 U. S., 131; Gardner *vs.* Herts, 118 U. S., 180; Weir *vs.* Morden, 125 U. S., 98; Shipley *vs.* Manuf. Co., 127 U. S., 396; Aaron *vs.* Railway Co., 132 U. S., 84; Day *vs.* Railway Co., 132 U. S., 98; Roemer *vs.* Bernheim, 132 U. S., 103; Watson *vs.* Railway Co., 132 U. S., 161.

It is said by some of the plaintiff's witnesses that his striker taps the leg to which it is attached as well as the other, and his counsel urge this as important. The specifications say nothing about it, but ascribe the device's superiority to the fact that it strikes the opposite leg by a "swinging tangential motion." The claim also is silent on the subject. The counsel (as we understand) concede that the device would be old but for the capacity to perform this additional function. If that is true the patent is clearly void, because the claim embraces devices that will not perform it, and is therefore too broad. But aside from this the tapping of the leg referred to is unimportant. Every device used strikes and rubs the leg to which it is attached. Whenever the projection is hit by the opposite leg the blow is communicated to the other. The effect must necessarily be similar to the supposed tapping.

415 I would rather sustain the patent than overturn it (I feel this inclination in all cases), but the proofs will not allow me. The bill must be dismissed with costs.

(Endorsed:) No. 10. October sess., 1889. C. C. U. S., E. D. of Pa. Haughey *vs.* Lee and Sons. Opinion. Filed May 9, 1890.

416 And afterwards, to wit, on the 13th day of May, A. D. 1890, the court enters the following decree, viz:

In the Circuit Court of the United States, Eastern District of Pennsylvania.

MICHAEL HAUGHEY *vs.* JESSE LEE, LEWIS S. LEE, & WALTER LEE, Copartners Trading under the Firm Name and Style of Jesse Lee and Sons.	In Equity. October Session, 1889. No. 10.

This case having been brought on to be heard upon the pleadings and proofs, and Mr. Edward J. O'Brien and Mr. Edw. P. Bliss having been heard on the part of the complainant and Mr. Ernest Howard Hunter on the part of the respondents, and the same having been duly considered by the court, it is hereby ordered, adjudged, and decreed that the complainant's bill of complaint be, and the same is hereby, dismissed, with the costs to the respondents, to be taxed.

It is further adjudged and decreed that the preliminary writ of injunction here-before issued in accordance with the prayer of the said bill be, and the same is hereby, dissolved, with leave to
417 the respondents to proceed upon the bond heretofore filed in the cause conditional for the recovery of damages by reason of the issue of the said preliminary writ of injunction.

The form of the within decree is satisfactory.

EDWARD P. BLISS.

(Endorsed:) No. 10. October sess., 1889. C. C. U. S., E. D. of Pa. Haughey *vs.* Lee *et al.* Decree dismissing bill. Filed May 13, 1890.

418 And afterwards, to wit, on the 13th day of June, A. D. 1890, the complainant, by his solicitors, comes into court here and prays an appeal to the Supreme Court of the United States from the decree of this court entered May 13, 1890, in the words and figures following, viz:

C. C. U. S., E. D. of Pa.

HAUGHEY *vs.* LEE *et al.*	No. 10. Oct. Sess., 1889.

And now, to wit, this 13th day of June, A. D. 1890, Edward J. O'Brien, Esq., counsel for complainant, appears in open court and

prays an appeal to the Supreme Court of the United States from the decree of this court entered and filed May 13th, 1890, and the same is allowed, with security to be entered in the sum of one thousand dollars ($1,000).

419 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

MICHAEL HAUGHEY
vs.
JESSE LEE, LEWIS S. LEE, and WALTER LEE, Trading as John Lee and Sons. } No. 10. October Sess., 1889.

Know all men by these presents that we, Michael Haughey, as principal, and Patrick McCarty and James B. McCormick, as sureties, are held and firmly bound unto the above-named Jesse Lee, Lewis S. Lee, and Walter Lee in the sum of one thousand dollars, to be paid to the said Jesse Lee, Lewis S. Lee, and Walter Lee, their executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this twentieth day of June, A. D. 1890.

Whereas lately, at a circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in the said court between Michael Haughey, complainant, and Jesse Lee, Lewis S. Lee, and Walter Lee, trading as Jesse Lee & Sons, respondents, a final decree was rendered against the said Michael Haughey, and the said Michael Haughey having taken an appeal, which appeal has been allowed by the said circuit court to the Supreme Court of the United States, to reverse the said decree in the aforesaid suit:

420 Now, the condition of this obligation is such that if the said Michael Haughey shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his appeal good, then this obligation to be null and void; otherwise to remain in full force and virtue.

MICHAEL HAUGHEY. [SEAL.]
PATRICK McCARTY. [SEAL.]
JAMES B. McCORMICK. [SEAL.]

Sealed and delivered in the presence of—
GEO. F. HAID.
E. J. O'BRIEN.

Sureties approved.
WM. BUTLER, *Judge.*

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

Michael Haughey, Patrick McCarty, and James B. McCormick, obligors in the within bond, being duly sworn, on their oaths de-

pose and say that they are each worth, over and above all their debts and liabilities, the sum of two thousand dollars, and that they own real estate and personal property to that amount, subject to execution, within the State of Missouri.

MICHAEL HAUGHEY.
PATRICK McCARTY.
JAMES B. McCORMICK.

Subscribed and sworn to by said Michael Haughey, Patrick McCarty, and James B. McCormick, the above-named affiants, this 20th day of June, A. D. 1890, before me, at office, in the city of St. Louis.

[SEAL.] A. P. SELBY,
Clerk of the United States Circuit Court,
Eastern Division, Eastern Judicial District of Mo.,
By GEO. F. HAND, *Deputy.*

[Endorsed:] No. 10. October sess., 1889. Circuit court United States. Michael Haughey *vs.* Jesse Lee *et al.* Bond surappeal. Filed Jun- 24, 1890.

421 THE UNITED STATES OF AMERICA, *ss:*

To Jesse Lee, Lewis S. Lee, and Walter Lee, copartners trading under the firm name and style of Jesse Lee and Sons, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein Michael Haughey is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against said appellant, as in said appeal mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this June 24th, in the year of our Lord one thousand eight hundred and ninety.

WM. BUTLER, *Judge.*

Service accepted this 28th day of June, A. D. 1890.
ERNEST HOWARD HUNTER,
Solicitor for Respondents.

422 UNITED STATES OF AMERICA, } *sct:*
Eastern District of Pennsylvania, }

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of Michael Haughey *vs.* Jesse Lee, Lewis S. Lee, and Walter Lee, copartners trading under the firm name and style of Jesse Lee and Sons, No. 10, October ses-

sion, 1889, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 25th day of August, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fifteenth.

Seal U. S. Circuit Court, E. D. Pennsylvania.

SAMUEL BELL,
Clerk of C. C.

Endorsed on cover: Case No. 14,169. E. Pennsylvania C. C. U. S. No. 189. Michael Haughey, appellant, *vs.* Jesse Lee, Lewis S. Lee, & Walter Lee, copartners trading under the firm name & style of Jesse Lee & Sons. Filed September 19, 1890.

Office Supreme Court U.
FILED,
DEC 1 1893
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

No. 189.

MICHAEL HAUGHEY, Appellant,

against

JESSE LEE AND OTHERS, Appellees.

IN EQUITY. INFRINGEMENT.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

ABSTRACT, STATEMENT, ETC., FOR APPELLANT.

E. J. O'BRIEN,
Attorney for Appellant.

Nixon-Jones Printing Co., 215 Pine St., St. Louis.

IN THE

Supreme Court of the United States.

No. 189.

MICHAEL HAUGHEY,
Appellant,

against

JESSE LEE AND OTHERS,
Appellees.

IN EQUITY. INFRINGEMENT.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

ABSTRACT, STATEMENT, ETC., FOR APPELLANT.

STATEMENT.

THE BILL.

On October 24, 1889, the plaintiff (appellant) filed his bill in the court below against the defendants Jesse Lee, Lewis S. Lee and Walter Lee, who are engaged in the busi-

ness of manufacturers and dealers in saddlery, horse-goods and kindred articles and specialties, at the city of Philadelphia, under the partnership name of Jesse Lee & Sons; charging them with infringement of plaintiff's letters-patent No. 379,644, granted to him March 20, 1888, for improvement in *interfering device for horses.*

The bill set out—together with other matters usually appertaining to a bill of this nature—

(a) A prior suit and decree upon the patent herein of the Circuit Court, for the Eastern District of Missouri, in a suit between plaintiff and the Mound City Coupe Co., wherein the latter by the advice and direction of their counsel acknowledged the infringement charged therein and submitted to a decree, declaring said patent valid; and for an injunction and damages, which decree was conformed to.

(b) That by reason of the fact, that the defect in horses commonly known as "interfering" is apt to appear unexpectedly at times, in any horse; so that all horses may be subject to it; it arises from weakness of the legs at the pastern joints, induced by over-driving, over-loading or disease; that there exists a large demand for a device, which affords the best means of preventing and curing it.

(c) That the defendants unlawfully, against the will and consent of plaintiff, etc., did make and sell counterfeit interfering devices, in imitation of plaintiff's patent, and in infringement thereof, and did stamp thereon the title "patent applied for," intending thereby to injure the plaintiff, and to deceive and mislead the public into a belief that the plaintiff's device was not patented to him.

(d) That defendants in furtherance of a fraudulent design to deceive the public and injure plaintiff, in conjunction

with said unlawful manufacture and sale of said infringing device by them as aforesaid, did issue and publish, and cause to be distributed in large numbers in the city of Philadelphia, and elsewhere, printed cards and circulars bearing a device and representation of plaintiff's said patented article, and did falsely represent therein and thereby that said patented device was the invention and property of the defendants instead of the plaintiff's.

The following is a copy of the circular complained of, (see printed record, p. 71). See opposite page.

THE ANSWER.

The defendants all joined in the answer, whereby it is DENIED — *except as otherwise hereinafter stated as admitted* —

(1) That plaintiff was the inventor; that it was not used for two years previous to plaintiff's filing his application for a patent on September 22d, 1887.

(2) Admit the issue of the patent to plaintiff, but leaves it open for proof by him that the patent was issued in due form of law.

(3) That plaintiff had expended considerable means, etc., in making his patent useful and available to the public.

(4) That the invention is of great utility and value, or that it was a departure from prevailing methods, or that a brief use thereof would cure interfering.

(5) Leaves plaintiff to proof of demand, for his patented device.

(6) That the public have acquiesced in plaintiff's patent.

(7) Leaves plaintiff to proof of decree in Mound City Coupe case.

(8) Leaves plaintiff to proof of notice to infringers.

(9) That defendants infringe.

(10) Admit that defendants have made and sold interfering devices for horses; which interfering devices were marked, "patent applied for," but deny that such devices were an infringement of plaintiff's patent, and claiming that they were made under an application for a patent pending.

(11) Admit that they issued, published and distributed in Philadelphia and elsewhere, printed cards and circulars, advertising their alleged infringing device, but deny likeness to plaintiff's patent.

Alleges prior use by Charles Brinckerhoff, of Fishkill, N. Y., Henry Deamer, Alonzo Wiley and John H. B. Miller, of Philadelphia.

(To these by subsequent amendment of the answer were added as prior users, the names of Solomon Gilbert, of Norristown, Pa., John Hunter, of Philadelphia, Stote Clark, of Broadaxe, Pa., Thomas Miller, and the Thirteenth Street Railway Co., of Philadelphia.)

And sets up the alleged anticipating patents contained in the record, viz.:—

U. S. Letters Patent, No.	61,655,	dated	Jany.	29, 1867,	to Davy.
" " "	77,728,	"	May	12, 1868,	to Hall.
" " "	81,998,	"	Sept.	8, 1868,	to Hall & Clifford.
" " "	85,205,	"	Dec.	22, 1868,	to Brinckerhoff.
" " "	105,990,	"	Aug.	2, 1870,	to Smith.
" " "	160,248,	"	Feb.	23, 1875,	to Westbrook.
" " "	220,585,	"	Oct.	14, 1879,	to Dickinson.
" " "	250,771,	"	Dec.	13, 1881,	to Young.

Complainant's Exhibit, "Defendant's Circular."



BUSCH'S DANGLE BOOTS FOR Spreading a Horse's Gait.

PURPOSE—A cure for the habit of interfering. Not simply a protection.

ACTION—The balls strike the opposite leg and the horse must travel wider to avoid them.

MAKE-UP—The strongest materials are used. No slipping. Can't chafe.

REFERENCES—Every horseman who has ever used the Busch Dangle Boot.

PRICE—$2.00 per pair.

JESSE LEE & SONS,

Owners of Patent and Manufacturers,

No. 37 South Fourth Street,

PHILADELPHIA.

And claim that on account of the foregoing the plaintiff's patent, to be void.

(12) Deny confederacy to injure.

The answer is sworn to.

On the filing of the answer, the plaintiff moved the court below for a preliminary injunction, conformable to the prayer of the bill, and in support of said motion introduced twenty-seven affidavits, including those of horsemen, veterinary surgeons, experts, horse dealers, and dealers in saddlery, harness and horse goods; from St. Louis, Philadelphia, New Orleans, Milwaukee and Sacramento City, Cal., all of which affidavits substantially declare that the respective affiants were familiar with plaintiff's device herein, and know the same to be useful and efficacious in promoting the prevention and cure of interfering in horses; that there was nothing like it, made or sold on the market before Haughey's invention; and that they had reason to believe, and did believe Haughey to be the original and first inventor of a pendant interfering device, loosely fastened to a strap passing around the leg of a horse to prevent "interfering."

Among the foregoing affidavits are those of Charles J. Dyer of Milwaukee, Wis., A. A. Van Vorhis of Sacramento, Cal., Joseph J. Kreher of St. Louis, Mo., Martin Weydig of New Orleans, La., and Thomas Morgan of Philadelphia, all manufacturers and dealers in horse goods; and licensees under plaintiff's patent; these gentlemen state in addition to the novelty and utility of plaintiff's device, that there is a large and growing demand for it, cheapness and effectiveness being their recommendation, and Morgan says that "since Jesse Lee & Sons put upon the market horse boots made in imitation of the said patented device, affiants sales

have been greatly interfered with and diminished." (R., p. 31.)

The defendants filed seven affidavits offered to the motion viz.:—

Henry Deamer.

Who claimed to have a knowledge of a piece of rubber hose having been used suspended to a leg strap to prevent interfering before September, 1885, in Philadelphia.

Geo. S. Christie.

One of defendant's salesmen, says he was careful to point out differences and advantages possessed by the "Busch" over the "Haughey" device and that he has sold a large number of Busch boots and his customers preferred them to Haughey's.

Rudolph M. Hunter.

Defendants, solicitor and expert would distinguish the Busch device from the Haughey's patent. He says (Rec., p. 36): "I have carefully compared the two apparatuses, and am of the opinion that they are materially different in construction and mode of operation, and that the apparatus known as the Busch dangle boot is not an infringement upon the invention set forth in letters-patent No. 379,-644," referred to. From an examination of the said letters-patent, I understand the invention therein set forth to consist of an interfering device, consisting of a pendant made of rubber or wood or other suitable material, loosely jointed to a strap passing around the leg of a horse, substantially in the manner shown and for the purpose set forth. The object of this invention is to prevent a horse striking one of his legs with the other during motion and thereby injuring the leg. This is the evil known as interfering. To accomplish this object the inventor em-

ploys a leg strap, which may be attached to the horse's leg in any desired position, and loosely jointed to the leg strap is a depending portion or pendant which is free to swing from this loose joint while the horse is in motion and thereby strike the opposite leg; if the horse travels with his legs too close, the swinging of the pendant being imparted by the movements of the leg carrying the apparatus. In its specific details there is illustrated a pendant formed of a stem, provided with lugs at the top and bottom, and supporting a series of balls or annular sections. The upper end of the stem B^5, is looped about a ring B^5 and fastened, and this ring is attached to the strap, B^4 passing around the ring B^3 and fastened to the straps by rivets C^1. A modification of the specific formation of the pendant is illustrated in Fig. 2 of the patent, but there is no modification of the loose joint shown or described. I understand, therefore, that while the invention may not be limited to any specific construction of the pendant, itself, the two essential features of this invention lie in the employment: 1st of a pendant; 2d, of loosely jointing the pendant to the leg strap. * * * The essential feature of the Busch device is that the striker shall laterally project, so that during the motion of the horse it will move in a substantially horizontal plane, and will not fly about in different directions, as does the loosely jointed pendant of the Haughey patent as I understand it, this flying about of the pendant will strike not only the opposite leg of the horse, as is intended, but also the leg by which it is carried."

Lewis S. Lee, Defendant.

Says the Busch boot is materially different from the Haughey, that striking the leg on which the device is attached is highly objectionable, that defendants make the Busch device; the essential feature of which is a laterally

projecting striker, which does not strike the leg to which it is attached and is not loosely jointed to the leg strap but is formed continuous with it. That the rights to the Busch invention belong to a member of defendants' firm, and that the said Busch boots are made under an application for a patent, and were therefore marked "patent applied for."

Walter Lee, a defendant.

Says he is familiar with plaintiff's patented device herein, also with the boot made by defendants known as the "Busch Dangle Boot," that the latter is different from the former. That the Haughey boot strikes the leg to which it is attached and that feature is not possessed by the Busch boot. That the Busch invention is the property of affiant, and defendants marked the Busch apparatus made by them as "patent applied for," on account of the application for a patent thereon.

Charles H. Kendrick.

A livery stable keeper in Philadelphia, says he is familiar with the Haughey and Busch boots and that the Busch dangle-boot is much superior in practice and construction to the Haughey.

Charles L. Busch.

Says that he knows the Haughey boot, and "that he is the inventor of the apparatus known as the Busch dangle-boot, the device sold by the defendant, and that the same is different in construction and mode of operation from the said Haughey device; that the essential feature of the Busch *dangle*-boot is that the striking portion projects *laterally* from the leg strap, so that it cannot strike the leg, by which it is carried, and is not a pendant or depending portion." * * *

(In addition to the foregoing, the court below having appointed Joshua Pusey, Esq., special examiner to take proofs orally, and on the motion for a preliminary injunction, there were examined: Michael Gallagher, Robert Jack, Lewis S. Wessels, Alfred Miller, Standish F. Hansel, M. S. Frink, R. L. Fitzgerald and James A. Marshall on the part of plaintiff, all of Philadelphia. But as their testimony was stipulated into plaintiff's main case (see Rec., p. 72), the same is only referred to here).

Upon hearing and submission of the motion by both sides, on January 28, 1890, the court ordered that a preliminary injunction issue upon complainant entering security in the sum of twenty-five hundred ($2,500.00) dollars, which was done accordingly (see R., p. 48).

PRIMA FACIE CASE.

On the *prima facie* case plaintiff gave evidence showing that he was 49 years old and engaged in the livery stable business at St. Louis, Mo., since 1865; that he was the inventor, patentee and owner of the patent herein; that since March 20, 1888, — the date of the letters-patent; — he had made and sold a large number of his devices, and had established agencies in Philadelphia, Milwaukee, Sacramento, New Orleans and St. Louis; that about 10,000 of them had at that time (Feby. 1890), been put in use; that the exhibit "Complainants Device" was made according to the letters-patent, and that the exhibit defendants device was an interfering device having the pendant and swinging motion of his patent. That the Busch dangle-boot had been by defendants extensively placed throughout the country, and thus reduced the sales of his patent device. Exhibit B. defendants' device being purchased in St. Louis.

(It was admitted of record by the defendants that plaint-

iffs exhibit defendants' device were purchased from defendants and were made and sold by defendants before suit.)

Charles Pickles (expert for plaintiff) stated that defendants' device is the same as that described in the Haughey patent, *i. e.*, a device consisting of a pendant and strap encircling the leg, said parts being loosely connected for the purpose of allowing a free movement of the pendant.

The pendant in defendants' device is loosely jointed to the strap encircling the leg; referring to diagram of defendant's device (p. 71, R.), the parts marked "b b" are drawn tight around the leg, a portion of the strain being taken by the pad "C" and no part of it by the joint "A" they merely serve as a connection between the strap and serve the purpose of holding the pendant balls while the part "C" serves as a continuation of the strap; when the pendant is loosely jointed, as in the Haughey device, it is liable to strike one leg, or it is liable to strike both; the construction permits of its doing either or both. Plaintiff introduced his letters-patent in evidence (see R., p. 68), also the decree in the Mound City Coupe case.

DEFENDANT'S EVIDENCE (p. 146).

Defendants to show prior use introduced Solomon Gilbert of Norristown, Pennsylvania, who used a square block of wood on the end of a chain to stop kicking in the stall by a horse (see R., p. 263).

Q. 10. How long have you used this?

A. I suppose two or three years. I wore out several of them until I got this one.

Q. 11. How long have you used devices similar to this, either with or without a block?

A. I suppose I have used it four years.

John Perry.

Described something like a dog chain which he saw in Wiley's closet after the war, with a ball as big as a smal grape that hung loose. The witness did not know what it was used for, but supposed it was for interfering; it was not soiled any and Wiley never told him what it was for.

This witness also describes a kicking block that he used during the war, and which he had not used for twenty years because the horse it was put on last kicked it all to pieces.

E. M. Johns.

Says that about 1868 or '9, he saw a chain with a ball attached to a shin boot that protects the knuckles, put on a horse at Norristown by Stote Clark; Clark only used it once and didn't tell witness what it was for but witness supposed it was for brushing.

E. R. Snyder.

Says when he was a boy he seen a similar thing to Ex. A. Defendant. But the strap was wider, and had a sort of dog chain, I didn't know that it was fastened to an interfering boot, I thought it was a pair of hobbles. I never saw it used and did not know what it was used for.

Thomas Miller.

In regard to Ex. A. says that he guesses a similar thing was used at the Norristown track along in the sixties. Cannot say that he ever seen them used on a horse, he thinks that he used one on his own horse in 1880. The chains I cut off for the trainers was from 8, 12 to 15 inches long according to how bad they (the horses) were, they wanted chains of different weights. Witness never saw the exhibit before.

John H. B. Miller.

Said he had seen something similar to defendant Ex. A. at Norristown 23 or 24 years ago, with Mr. Wiley. In answer to the question did you ever see anything else (than a chain) used by Wiley, witness said "I think I seen them with wooden balls, slipped on a piece of string and tied on there.

Q. 19. Did he ever use anything than wooden balls? A. Not that I know of, — except the chain, — he might have used something else; I did not go close enough to examine them.

Q. 20. Was this device, to which you have just referred, similar to this which I now hand you, excepting that the balls were made of wood? A. Years ago it was round the horse's fetlock. Yes, I have seen him using wooden balls that were round things; I think they were wooden balls ("the device referred to and identified by the witness is offered in evidence and marked Respondent's Exhibit B").

(The remarks of counsel objected to as not being supported by the statement of the witness). See R., p. 159.

Witness has bought and used the Haughey patent and sent others for it and noticed that a great many of them were used. Wiley did not use these devices for interfering but to gait a horse by weighting him and they might be put anywhere on the horse's legs.

James O'Rourke.

Knew the Haughey device and had used it, had lived 45 years in Philadelphia and never had seen a Deamer device in use there.

Lewis S. Lee (defendant).

(R., p. 181.) Said he belonged to defendants' firm; was aged 38; that his first knowledge of the Haughey boot was

seeing an advertisement of it in a newspaper, afterwards saw one of the boots.

Q. 6. (p. 180.) Prior to that had you ever seen a horse boot having a pendant portion free to swing from a leg strap or other means of support on the horse? A. Yes, sir; I had, and that made me think it strange, that any one could obtain a patent on a device of that description.

Q. 7. When and where did you first see such a boot; I mean other than the Haughey boot?

(Objected to as incompetent.)

A. It is impossible for me to say just when and where I first saw such a boot, but I have a very definite recollection of seeing a boot of that character some years ago. I was coming down Marshall street, and near the corner of Callowhill street I saw a team with two horses attached to a heavy wagon. On the fore-leg of one of those horses there was a boot which attracted my attention by its swinging motion, and as I slowly passed the team I looked to see what it was. I had no interest in the matter at the time, excepting mere curiosity, but I distinctly recall that the boot consisted of a strap of some sort encircling the leg of the horse, and that pendant from this strap was a piece of some dark colored material several inches long, probably an inch and a half to two inches wide, but not quite so thick. This pendant swung freely as the horse moved. The horse was walking.

Q. 8. I now hand you a device which has been marked for indentification in this case as Complainant's Exhibit C., and ask you whether this device, with reference to which you have just testified, was similar in general appearance to this device?

A. Very similar. The only difference that I can perceive is that the one I saw struck me as being a little broader than this, and it swung more freely than this does. I suppose it had been in use for some time, or else may

be had been constructed with a fuller loop. I do not know that the other was rubber. I do not know the material. *I did not examine it.*

Q. 9. Can you tell me about how long ago this was that you saw this boot?

A. It was over six years ago. I have endeavored to recall more definitely, when I first saw the device, but am unable to associate it with other facts which would enable me to do so. I say over six years ago, but I am positive it was prior to serious illness which I had at that time. My belief is that it was between six and ten years.

Q. 10. Then you are positive it was prior to the year 1885?

A. I have not the faintest doubt.

Q. 11. I would recall your attention to the fact that the alleged infringing devices manufactured by the defendants in this suit are marked "patent applied for." Can you tell me from your own knowledge whether these devices were made under an application for letters-patent?

A. An application was made for a patent on the device, and it was on that account that the boots were stamped "patent applied for."

Q. 12. Are you aware whether letters-patent have been granted upon that application?

A. Yes, sir.

Q. 13. I produce here letters-patent No. 423,854, granted Charles L. Busch, for an improvement in horse boots, and ask you whether this is the patent which was granted upon the application under which these alleged infringing devices were made, and in accordance with which the said alleged infringing devices were marked "patent applied for," as you have testified?

A. Yes, sir; this is the patent (counsel for the respondent offers in evidence a printed copy of the letters-patent referred to, to wit: letters-patent No. 423,854, and

the same is marked, "Respondent's Exhibit, Busch patent") (see Rec., page 181), — granted to Walter Lee of the defendant firm.

On cross-examination the witness stated: That prior to the date of the application for the Busch patent, Sept. 16, 1889, the defendant's had handled the Haughey boot in their store; that Mr. Busch was an employe of the defendants, and that he had been in Mr. Morgan's employ, but witness did not know that he made the Haughey boot there. That as witness understood it, the Busch boot didn't possess a pendant (R., p. 186).

"The Busch boot as we were making it at the time the "suit was brought against us, and for some time pre- "viously, had been constructed so as to avoid, as we "believed and intended, any possibility of its becoming a "pendant."

That four of defendants' salesmen carried samples of the Busch boot and handled them. That he had no recollection of a pendant boot on the market prior to the Haughey device. That the Haughey boot consisted of three separate elements, viz.: the pendant, the loop and the encircling strap. That the Busch device consisted of but one element, viz.: the continuous strap which carries the balls, passes through the pad, encircles the leg, and is secured by the buckle at the end

(Rec., p. 190.) x-q. 86. Had you previous to the Haughey boot ever had in the stock of your store * * * an interfering device with a dangle attached to it? A. I do not remember ever having anything of that kind in the stock. * * * I do not remember anything of the kind.

(Rec., p. 193) x-Q. 118. As a matter of fact you have stated in your direct examination that you were always careful to point out to customers to whom you sold the Busch boot, the difference between it and the Haughey boot? A. I said we were careful to point out its distinctive

merits, I think. I do not think that I said that we were careful to point out the difference between it and the Haughey boot or trouble ourselves about the Haughey boot. Of course that matter was brought into discussion sometimes *on account of the similarity in appearance.*

(Rec., p. 195.) x-q. 130. Would you deem the acquisition of the exclusive sale of the Busch device a valuable one to your business? A. Yes, sir; I consider the Busch device valuable to us. * * * x-q. 134. But so far as you have gone, your impressions are very favorable of its being very valuable? A. We thought it was, or else we would not have taken up with Mr. Busch's patent.

(Rec., p. 197. By Mr. Hunter. R-D-Q. 150.) When the affidavits were prepared in opposition to the motion for a preliminary injunction in this cause, was it not a fact, that what the defense relied upon was chiefly the non-infringement of the Busch device upon the Haughey patent? A. As far as my understanding of the case was, that was the nature of it, because I remember saying to my Attorney,, that I had no desire to injure Mr. Haughey or destroy the validity of his patent; that all I cared to substantiate was the fact that the device we were manufacturing was not an infringement.

Joseph Blankley.

Stated that Respondent's Ex. D. was like devices he had made in Philadelphia over ten years ago. Witness had seen the Haughey boot, but not the Defendants' Ex. C.

Francis Stewart.

Had seen boots like Defendants' Ex. D. along from 1868 to 1875; he also used a piece of rubber hose, something like the drawing marked Stewart Device. (Rec., p. 203.)

Q. 18. Have you seen these devices with the projecting

portion hanging down or depending? A. I cannot say that I have. * * *

On cross-examination this witness testified that he never knew the rubber hose to be on the market as a horse boot, and never saw that drawing before.

Rudolph M. Hunter (defendants' expert, see Rec., p. 211).

Stated that the invention, if any, in plaintiff's patent, is not embodied in Complainant's Ex. Defendants' Device and Defendants' Device B, and gives his reasons therefor at length; the substance whereof being, that in the Haughey device the pendant is to have but one point of connection with the strap that allows of the pendant swinging freely by a loose joint whereby the pendant is permitted to strike the leg on which the interfering device is secured as well as the opposite leg of the horse — this is the function of the pendant (Rec., p. 214). The defendants' devices are intended to have the projecting portion extend laterally, and not hit the leg on which it is secured, but the opposite leg. Witness reviewed the alleged instances of prior use and finds plaintiff's invention in them, and states that he was the attorney in procuring the Busch patent.

On cross-examination witness stated (Rec., p. 230).

x-Q. 43. And you do not find anywhere in the prior art, laying aside for the present the alleged instances of prior use which have been testified to, any interfering boot consisting of a pendant loosely jointed to a leg strap, using the word "pendant" in the sense in which you have testified it is used in the complainant's patent, namely a device which normally hangs in a vertical, or nearly vertical position?

A. I do not find in any of the patents offered in evidence by the defendants a pendant loosely jointed to a leg strap so as to hang vertically, and adapted to strike the leg to which the leg strap is secured as well as the opposite leg.

Henry Deamer.

Says he made a device like Defts. Ex. C. for a man named Chestnuts, in Philadelphia thirty years ago on his order; don't know of any one else. He cannot say that he ever seen it used on a horse; also that he made one five years ago but cannot tell who he made it for. Witness had dealt in the Haughey boot since it came out. (Rec., p. 241.)

James B. Mullin.

A driver, says he saw a boot like Ex. C. in Deamer's store about twenty years ago, there were five or six. "I asked him (Deamer) who he was making them for, and he said a man by the name of Chestnut; on cross-examination the witness stated that may be it was twenty-four years ago since he seen the boots he speaks of, that he saw seven or eight of them in stock, two were lying in the window; never saw one of them used on a horse. Later the witness fixes the time of seeing Ex. C. at Deamer's at twenty-seven years, or in 1863.

[It may be noted that of all the alleged instances of prior use or anticipatory devices produced by defendants in the case, there is only one original thing, and that is the Gilbert kicking block that does not antedate the plaintiff's application, and is in no just or reasonable sense an anticipation of plaintiff's invention.]

IN REBUTTAL.

James A. Marshall—for plaintiff, testified:—

That he was a veterinary surgeon and had practiced his profession for twenty-one years in Philadelphia, that the Haughey boot was the first device having a pendant to pre-

vent interfering in horses, that he had seen in his experience.

(Rec., p. 75.) x-Q. Have you ever heard of a horse boot having a pendant position suspended from a leg-strap, prior to the time your attention was first called to the so-called Haughey boot?

A No, sir; not for interfering purposes. As I mentioned before, I have seen a pendant attached to a leg strap to prevent a horse from kicking in the stall with a rope and block of wood, and a chain from ten to fourteen and fifteen inches long, so that when the horse would make a kick the chain would rebound and strike the leg. I have used these a good many years ago. Every time a horse is pawing it punishes him.

x-Q. Upon what part of the horse's leg were those devices suspended? A. Generally above the knee of the front leg and the hock of the hind leg.

x-Q If such a device was suspended, or was attached at or near the pastern joint, and the chain was reasonably shortened, would not such a device act in substantially the same manner as the so-called Haughey boot? A. The difference would be that a device suspended to prevent kicking would be so much heavier than this that it would bruise the horse's leg. It would be either the chain, which I mentioned before, of iron, which is heavy, or of a rope with a block of wood attached to it, which is heavy. I think if a chain of that length were to be suspended, *a very light chain*, it might possibly have the effect, but there would not be the elasticity about it and it might bruise the horses leg."

Michael Gallagher.

Aged 53, in business at Philadelphia for 23 years as a dealer and manufacturer of horse goods, says he knew the Haughey boot about three years, it was a new thing to him, had never seen the "Deamer" device before.

Robert Jack.

Aged 43, had 25 years experience in Philadelphia, buying, selling, training and driving horses, first saw the Haughey boot about three years ago.

(Rec., p. 79.) Q. Was that the first time you saw a boot with a pendant working like the Haughey interfering boot in your experience. A. That is the first time that I ever saw it * * * have never before seen the "Deamer" device.

Lewis I. Wessels.

General superintendent of E. P. Moyer & Bros. for 30 years in Philadelphia; his business puts him in daily communication with owners and users of horses. Knew the Haughey device for about two years; it was new; I had never seen a dangle for the purpose of interfering.

Alfred Miller.

In the saddlery business since 1836 in Philadelphia. Knew of the Haughey boot for about two years; prior to that time had never seen an interfering boot with a dangle.

S. F. Hansell.

Aged 69 years and engaged for forty years in the harness and saddlery business in Philadelphia in the firm of W. S. Hansell & Sons; dealt in the Haughey boot. "I thought it was an entirely original idea when I first saw it; never before saw a Deamer device."

M. S. Frink (Rec., p. 87).

x-Q. Then you are not prepared to say positively that you have not seen such a device (i. e., boot having a pendant)? A. If you mean a boot made as a dangled boot, I do not think I have ever seen anything but that (indicating the Haughey boot). Now the idea that I have of this boot is that it works this way: As the horse steps he raises that

up, and that strikes his other ankle and makes him throw his other leg off. Now there is a boot made which is perfectly stiff, which goes right out; then there is a boot made of bristles. Now the only boot that I ever saw of this sort is this boot (Haughey). We always call it the dangled boot; we buy this boot, we make nothing of the kind at all, in fact, I do not know that any other kind was ever offered.

R. L. Fitzgerald.

Turf editor of the *Philadelphia Item*, says he knows the Haughey boot. "I have a very valuable mare, that it made her spread out and saved her from ruining her legs."

H. Haedrich.

In the harness business in Philadelphia since 1848, knows the Haughey boot, never before saw a boot with a dangler.

Wm. E. Weeks.

Manager for Kendrick's livery stable produced two samples of the Busch boot, furnished by defendants to Kendrick, marked A. & B. Kendrick.

The condition of these exhibits is about the same as when purchased, the pendant being down in about the same way and like the Complts. Ex. Defts. device.

Have used in Kendrick's stable and elsewhere the patented device, known as the Haughey boot (Rec., p. 90).

Q. Are you able to say whether there is any practical difference between the operation of the Haughey boot and that of the Busch dangled boot? A. There is no difference on the action of a horse while the horse is in motion. Q. In other words you consider the two boots as operating in

practically the same way, do you? A. Yes, sir.— Witness says that defendants furnished Kendrick with about two dozen of the boots.— On cross-examination this witness stated (Rec., p. 91.) x-Q. What is the object of this striker (indicating the Busch device)? A. To spread the horse to keep him from interfering. x-Q. How does it accomplish this object? A. By the motion of it, the object of it is this way (indicating). This, naturally goes against the horse's leg that the boot is on the interfering leg the one that he strikes makes a horse spread when he is in slow motion. When he is fast this is the motion of it (indicating), traveling fast strikes the other leg, if he travels close. x-Q. Have you watched these devices while they are in operation? A. Yes, sir. x-Q. Have you used the Haughey boot? A. Yes, sir. x-Q. What is the object of the striking portion in the Haughey boot? A. I cannot see any difference between the two * * * x-Q. Referring to this device marked "Kendrick Boot A," and "Kendrick Boot B," are you able to say that the strikers would strike the horse's leg to which the device was attached when the horse was traveling fast? A. Yes, sir; slow (Rec., p. 93). x-Q. In these devices which you have produced I notice that the striking portion projects outwardly; A. Yes, sir; a horse's hock projects outwardly too. x-Q. Do you mean to say that the horse's hock projects outwardly sufficient for these strikers to rest upon it? A. Yes, sir; at the ankle, to lay against it. (Mem: See fig. 3. drawings of Busch Patent).

Frank W. Ayers (horse bootmaker) (Rec., p. 98).

Says he saw the Busch boot on horses at Kendrick's stable that hung perfectly straight down; the weight of the balls would bring them down.

Thomas Morgan.

Maker and dealer of horse boots in Philadelphiaa for fifteen years. Knows Haughey and is licensee of his boot involved herein.

Q. Do you find considerable demand for the Haughey boot? A. The demand was pretty large before this infringment, as I call it (Lee boot), came along, and the demand is increasing since it ended. On cross-examination he stated that he had never seen a strap on a horse's leg carrying a chain three or four inches long for any purpose. Never short of a foot long and for kicking purposes.

From the file wrapper and contents of complainants' patent offered in evidence, filed September 22, 1887, we take the following criticism of the examiner, viz.:—

"This matter has received consideration, and the device "shown and described appears to be novel." * * * (October 9, 1887.) The following is the claim of the Haughey patent, to wit: "The interfering device consisting of the pendant made of rubber, wood, or other suitable material, loosely jointed to the strap, passing around the leg of a horse, substantially in the manner shown and for the purposes set forth."

From the file wrapper and contents of the defendants' (Busch) patent in evidence, filed September 16, 1889, we take the following criticism of the examiner under date, October 30, 1889, viz.: "As a criticism of the claims presented in this case, it is, perhaps, well to state, that for the most part, they are of a very indefinite character, and in no wise do they convey the structure which applicant has set forth as his invention." * * *

"Claim 3. Is met by Haughey of March 20, 1888, No. 379,644, same class as above, claim 4, is also refused on the last named patent, * * * and claim 6, by Haughey." (Rec., p. 121.)

The claims referred to are as follows:—

"3rd. In an interfering device for horses, a continuous strap, adapted to be secured to the leg of the horse, formed with a pendant or loop extending from that portion thereof which encircles the leg."

"4th. In an interfering device for horses, a continuous strap, adapted to be secured to the leg of the horse, formed with a pendant or loop extending from that portion thereof which encircles the leg, in combination with a device adapted to strike the other leg, carried by said pendant portion or loop." * * *

"6th. In an interfering device for horses, a strap, for attachment to the leg of the horse, having a pendant portion formed integral therewith," etc.

Under date of Nov. 20, 1889, amendment was made striking out the word, "pendant" and inserting the word, "striker" in lieu thereof. [The record shows eight rejections and a final allowance of a very limited character. (Rec., p. 131.)

The Busch patent is dated March 18, 1890. Under date of February 4, 1890, Busch's solicitor wrote to the Patent Office (see Rec., p. 136): * * * "there are very cogent reasons why we desire to obtain the issue of this patent as quickly as possible. The interests of the applicant will be seriously injured if the issue of the patent is delayed."

Under the foregoing evidence and circumstances the court below found for the defendants, and dismissed the appellants' bill with costs, giving as reasons there for the following:—

OPINION.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA IN THE THIRD CIRCUIT.

Haughey
vs.
Lee and Sons.

BUTLER, J. The plaintiff sues for infringement of patent No. 379,644, dated March 20th, 1889. "Interfering "device for horses."

The claim is as follows: "The interfering device "consisting of the pendant made of rubber, wood, or "other suitable material, loosely jointed tothe strap passing "around the leg of a horse, substantially in the manner "shown, and for the purposes set forth."

The answer attacks the patent, and denies infringement. To support the former appeal is made to the state of the art.

From this source it appears that interfering devices are of great antiquity; and of various forms, all having the same object,— protection of the leg, and spreading the stride. One of the earliest was the "boot," made of leather or other pliable substance, padded, and fitted to the leg,— the main purpose of which was to protect the leg. Even this, however, was supposed to exert some influence on the step. Following it came various other contrivances, the dominant object of which was to produce a wider step, — called "spreading." All these devices are still employed. Some consist of a strap strung with balls of wood, gum, or other similar material, made to buckle

around the leg, above or below the pastern-joint. These balls stand out a little further than the "boot." Others consist of a strap with leather loops attached to the outward side, two to five inches long. These loops at first are stiff, standing out horizontally, and are struck more readily than the "boot," or balls. After a little use the loops hang, though not perpendicularly. Others are made of bands of platted straw, of gum pipe, and similarly pliable substances, and so fitted to the leg that the two ends form a "striker." It is unnecessary to extend the enumeration. The object in all cases is to protect the leg, and induce a wider step. By this means it is sought to cure the vice of interfering. The projection on the strap is called a "striker."

A strap with pendant chain, or rope, has long been used to prevent kicking, in the stall. This is attached to the leg in the same manner as the other devices. The chain is of various lengths, usually a foot or more.

The defendant has also shown (if the testimony is credible), the use of an interfering device made of a strap and *pendant* striker, loosely hung. The witnesses testify to having seen it used at a race-course near Norristown. One witness testifies to having seen a similar device, — the pendant being of gum or wooden balls, — at the stable of Mr. Hitner, in the same vicinity. One witness, a harness maker, in Philadelphia, testifies that he assisted to make a number of similar devices for a farrier, the strikers of which consisted of gum pipe — illustrated by an exhibit in proof. Another testifies that he saw these in the shop window when made. The witnesses who testify to the devices used near Norristown, speak of a period twenty years past; and the same is true of the witnesses who testify to the Philadelphia device.

The plaintiff called a number of persons, familiar with the general subject, who say they never saw any such

devices. This does not, however, disprove their existence. I should hesitate to disregard the testimony of the plaintiff's witnesses; or to accept the suggestion that these devices were experiments merely. Yet I would hesitate to declare the patent invalid on this testimony.

The case may be put on safer ground. In view of the other devices shown — about whose existence there is no question,— it seems clear that the slight change in form which the plaintiff made did not require invention. He simply altered the "striker" from a horizontal to a perpendicular position. He found it standing out laterally, and loosened it so as to hang. This was all. Surely no invention was required to do it. Any mechanic to whose line the work belonged (or indeed any handy person, though not a mechanic) could do this. The idea or conception that this change might be beneficial, was not patentable. The question is simply, was invention required to make the change? In my judgment it was not. The kicking device exhibited a method of doing it. This device indeed required nothing but shortening the chain to make it correspond in every essential respect with the plaintiff's. Applying this to a horse in motion, instead of one standing in his stall, is not even a new use. If new it would be analogous to the old. Patents are constantly overturned for want of invention, where its absence is not so clear. The later volumes of reports are full of such cases; eight are contained in the last issued — 132 U. S. It is sufficient to cite a few of them.

Hollister *v.* The Manuf. Co., 113 U. S. 59;
Thompson *v.* Boisselier, 114 U. S. 1;
Penna. R. R. Co. *v.* Locomotive Truck Co., 110 U. S. 490;
Busby *v.* Excelsior Manuf. Co., 110 U. S. 131;
Gardner *v.* Herts, 118 U. S. 180;

Weir *v.* Morden, 125 U. S. 98;
Shipley *v.* Manuf. Co., 127 U. S. 396;
Aaron *v.* Railway Co., 132 U. S. 84;
Day *v.* Railway Co., 132 U. S. 98:
Roemer *v.* Bernheim, 132 U. S. 103;
Watson *v.* Railway Co., 132 U. S. 161.

It is said by some of the plaintiff's witnesses that his striker taps the leg *to which it is attached*, as well as the other, and his counsel urge this as important. The specifications say nothing about it, but ascribe the device's superiority to the fact that it strikes the opposite leg, by a "swinging tangential motion." The claim also is silent on the subject. The counsel (as we understand) concede that the device would be old but for the capacity to perform this additional function. If that is true the patent is clearly void; because the claim embraces devices that will not perform it; and is therefore too broad. But aside from this, the tapping of the leg referred to, is unimportant. Every device used strikes and rubs the leg to which it is attached. Whenever the projection is hit by the opposite leg the blow is communicated to the other. The effect must necessarily be similar to the supposed tapping.

I would rather sustain the patent than overturn it (I feel this inclination in all cases) but the proofs will not allow me.

The bill must be dismissed with costs.

And thereafter appellant duly appealed therefrom to this court, and makes the following —

ASSIGNMENT OF ERRORS.

I.

The court below found upon the defense of non-invention of plaintiff's patent: when the same was not tendered

by the pleadings or comprehended by the evidence in the case.

II.

The court found upon the defense of non-invention of plaintiff's patent: when under the pleadings and evidence it was shown that after defendants became aware of plaintiff's invention and dealt in it, they procured an application to be made by one of their employees, for a patent on substantially the same invention as plaintiff's; and defendants are estopped thereby.

III.

The court found that Haughey was the first in the credible art — to provide a *pendant*, instead of a *spur*, projecting laterally from the leg strap, and conceding the change thereby wrought by Haughey in these devices to be a beneficial one. Nevertheless it was held not to be invention, but might be done by anybody.

IV.

The court found that the kicking device could, by shortening the chain and modifying it so as to correspond with plaintiff's device, be made similar to and thus anticipate the latter.

V.

The court found that plaintiff only changed the form. Yet the patent states that the object of the device of plaintiff is: "to provide against a horse striking or interfering by means of a pendant that will move and *swing freely between his legs* from a loose joint."

VI.

The court found that the claim did not show a device that was susceptible of tapping the leg carrying the same.

VII.

The court refused to give to plaintiff's letters-patent their *prima facie* value as evidence, and considered devices as anticipations that were not originals or well authenticated representations of originals.

VIII.

The court contrary to the law and the evidence, and contrary to equity, found for defendants.

IX.

The court failed to find that the defendants had infringed plaintiffs patent.

BRIEF.

I.

(a) "Letters-Patent No. 379,644, issued March 20, 1888, to Michael Haughey, for an improved device to prevent interfering by horses, and consisting of a boot buckled around the leg just above the pastern joint, and having attached to it short pendant straps on which are strung small rubber balls, covers a new and useful invention."

(b) "Although the defendant in a suit for infringement adduced considerable evidence of prior use, the fact that he was unable to produce a single device antedating the patent, deprived his evidence of the certainty required to overthrow a patent."
Per Thayer, J.

Haughey *v.* Meyer, 48 Fed. Rep. 679.

[The above case involving the patent now before this court, was decided December 28, 1891, and was not appealed. In it, as in the present case, the defendants failed to produce a single instance of prior use antedating the patent sued on.]

II.

INVENTION.

A subject-matter to be patentable must require invention, but it is not necessarily the result of long and painful

study, or embodied alone in complex mechanism. A single flash of thought may reveal to the mind of the inventor the new idea, and a frail and simple contrivance may embody it. Some inventions are the result of long and weary years of study and labor and pursued in the face of abortive experiments and baffled attempts, and finally reached after the severest struggles, while others are the fruit of a single happy thought.

Carr *v.* Rice, 1 Fisher, 198, 206;
Matthews *v.* Skates, Id. 602;
Many *v.* Sizer, Id. 17;
Blake *v.* Stafford, 3 Id. 141, 145.

In the case of Crandall *v.* Waters, 9 Fed. Rep. 659, being a case involving box loops for carriage tops, Mr. Justice Blatchford says in speaking of the defense (p. 262): To maintain non-infringement, and yet enable themselves to appropriate the real invention, they contend, etc. * * *

"Various old devices are introduced wherein sheet metal prongs or lugs projecting through a material, such as leather or paper, and clinched by bending them, held and secured the metal or other articles to which they were attached on the other side of the materials. This idea was old and was embodied and used by Davis. But no article like the plaintiff's capable of being taken and used for the purposes for which the plaintiff's can be used, without alteration and adaptation requiring invention, existed before. Almost all inventions at this day, that become the subjects of patents, are the embodiment and adaptation of mechanical appliances that are old. In that consists the invention. When the thing appears it is new and useful. No one saw it before. No one produced it before; it supplies a need; it is at once adopted; all in the

trade desire to make and use it; yet it is said to have been perfectly obvious, and not to have been patentable."

The statutes do not require inventions to be superior to, or better than, all other things known in order to be patentable. It is sufficient if they are useful in themselves and new.

Shaw *v.* Colwell Lead Co., 11 Fed. Rep. 711.

To change the form of an existing machine and by means of such change to introduce and employ other mechanical powers, or, as it is termed, a new mode of operation, and thus attain a new and useful result, is the subject of a patent.

Winans *v.* Denmead, 56 U. S. (15 Wall.) 330–341;
Eppinger *v.* Richey, 14 Blatch. 307;
Cahoon *v.* Ring, 1 Fisher, 397.

The view of the court below, that Haughey's step in the art was one obvious to any mechanic or any handy person, is negatived by the fact, that up to his invention no construction is shown in the state of the art, which contains a pendant, although several devices showing attempts to provide a means to prevent or cure interfering are exhibited. They all proceed upon the same principle, viz.: providing a buffer or spur, projecting laterally from the leg strap, to ameliorate the force of the one foot striking the other in the act of interfering.

The invention of Haughey changed all of this by providing a pendant having a mode of operation described in the patent, wherein he says: "The object of my improvement is, first, to provide against a horse striking or interfering, by means of a pendant that will move and swing freely between his legs from a loose

joint." The necessary action of the pendant device described and shown is to play freely between the legs of a horse while he is in motion, and thus inform him by what may be properly expressed by the term "nervi motion," that there is a foreign factor or thing affecting him at the point of interference in his legs, and he forthwith seeks to avoid it by spreading them farther apart; thus if the horse be traveling slowly the pendant dangles and plays on the leg to which the device is attached, and when he comes to travel faster — as the pendant receives its action from the horse — its accelerated motion causes it to swing out tangentially and strike the leg oppo-ite to that which holds it, as the patent specifies. The fact that Haughey's pendant device would touch or tap the leg to which it is attached is such an obvious one under the drawing, specifications and claim, as not to require other reference than the construction and mode of operation therein shown and claimed.

The fact, that as soon as a patented improvement was made and introduced, its advantages over devices which had preceded it became manifest at once, and it commended itself to the public, as a practical and desirable improvement, affords a safer criterion of inventive novelty than subsequent opinion of an expert or intuition of a judge.

Palmer *v.* Johnstone, 34 Fed. Rep. 336.

Where the other facts in the case leave the question of invention in doubt, the fact that the device has gone into general use and has displaced other devices which had previously been employed for analogous uses, is sufficient to turn the scale in favor of invention.

Krementz *v.* S. Cottle Co., 148 U. S. 556, and cases cited in the opinion of the court.

(The above case has many points in common with the

present, the court below having held the patent void for want of novelty, which this court reversed.)

III.

CONSTRUCTION.

A combination is sufficiently described, if the *devices* of which it is composed are named, their mode of operation given, and the new and useful result to be accomplished pointed out, so that those skilled in the art and the public may know the extent and nature of the claim and what the parts are, which co-operate to produce the described new and useful result.

Parks *v.* Booth, 102 U. S. 96–102;
Seymour *v.* Osborne, 11 Wall. 516.

If the specifications set forth the thing to be done in such a manner, that it can be reproduced, it need not set forth the scientific principle upon which the operation depends.

It may be that the inventor did not know what the scientific principle was, or that knowing it, he omitted from accident or design to set it forth. That does not vitiate the patent. He sets forth the process or mode of operation. The principle referred to is only the why and the wherefore. That is not required to be set forth.

Per Blatchford, J., in Andrews *v.* Cross, 19 Blatch. 290, 305.

A demurrer for non-patentability apparent on the face of the patent should not be allowed unless the instrument

is so palpably destitute of invention that the court can say that no question of fact can arise upon it.

Blessing *v.* John Trageser Works, 34 F. R. 753.

The burden of proof is on the defendants to establish the defense of want of novelty. For the grant of letters-patent is *prima facie* evidence that the patentee is the first inventor of the device described in the letters-patent *and of its novelty.*

Cantrell *v.* Wallick, 117 U. S. 689, 695;
Smith *v.* Goodyear &c. Co., 93 U. S. 486;
Lehnbeuter *v.* Holthaus, 105 U. S. 94;
Alden *v.* Deway, 1 Story, 336.

ESTOPPEL.

When one, with a knowledge of the state of the art, surreptitiously attempts to appropriate to himself, by obtaining a patent therefor, an invention which he knows does not belong to him, he should be estopped in a suit for infringement from interposing the defense of want of novelty against a person whom the patent office has decided, as against his claim, to be the original and first inventor.

Greenwood *v.* Bracher, 5 Ban. & A. 302.

That defendants well knew of the Haughey device and had handled and sold them before having the application made for a patent on the Busch device, with which they were in privity, is admitted by Mr. Lewis S. Lee (see record, pp. 182, 183).

The file wrapper and contents of the Busch application in evidence (Rec., p. 116), shows that the patent office

did four times reject claims of the applicant submitted, that were comprehended and covered by the complainants' patent on the pendant, before the time that the defendants filed their answer in the case on January 21, 1890, in which answer it is stated under oath as follows, viz. (see Rec. p. 9)—

"10th. These respondents further answering admit that they have made and sold interfering devices for horses, which interfering devices were marked, 'patent applied for,' but deny that the said interfering devices were a counterfeit or imitation of the complainant's alleged patented improvement, or were any infringement thereon, and deny that they did sell the same intending to deceive and mislead the public, but that the said interfering devices are different in construction, and mode of operation from the complainant's alleged invention; and that they are made under an application for letters-patent now pending before the Patent Office at Washington, and were accordingly marked patent applied for, as aforesaid.

"11th. These respondents further answering, admit that they did issue and publish, cause to be distributed in the city of Philadelphia and elsewhere, printed cards and circulars, advertising THEIR said improvement in interfering devices, but deny that the said printed cards or circulars bore any device and representation of the complainant's alleged patented improvement as alleged in the said bill of complaint."

[Compare the defendant's circular with the device represented in the complainant's patent drawing; or, the respective devices with one another, and the absurdity of respondents' position of dissimilarity becomes apparent.]

— Infringement —

If the peculiar invention of the patentee is embodied in the defendants' device, however it may be combined with

other things, it is appropriated the same as if it were without such other parts or connections.

Flint *v.* Roberts, 4 Ban. & Ard. 165.

It is a familiar rule, that to copy the principle or mode of operation described in the patent, is an infringement, although such copy should be totally unlike the original in form or proportions. If it were not so, no question of infringement could arise. If the device or machine complained of were a copy in form of the one described in the specifications, it would at once be seen to be an infringement. It could be nothing else.

Winans *v.* Denmead, 15 How. 330.

(The defendants' device is so like the plaintiff's in appearance, structure, material and operation, that it may be said to be the same thing, and is so designated by some of the witnesses.)

(A careful study and analysis of the reasoning employed by the learned judge of the Circuit Court in this case taken from the written opinion therein shows two theories were employed by him in reaching the conclusion that the plaintiff's patent is void for non-invention, viz.: First. That inasmuch as the unquestioned state of the art shown by prior patents disclosed a spur laterally projecting from a leg strap to prevent interfering. It required no invention to change it to a pendant but such change was within the common knowledge, not only of a mechanic but of any handy person. "He (Haughey) found it standing out laterally and loosened it so as to hang * * * the idea or conception that this change might be beneficial was not patentable" says the court. Second. The kicking device exhibited a method of doing it by shortening the chain,

and making it correspond to plaintiff's patent. In other words by making alterations and modifications of the kicking chain, it might be made to perform the functions of complainant's patent.

(Aside from the objection, that any anticipatory device, requiring to be changed or modified, is incompetent, the evidence in the case of Dr. Marshall, Mr. Morgan and others shows it to be impracticable and even dangerous).

Referring to the use by the court below of the kicking block or chain as an anticipation, we recur to the case of Topliff *v.* Topliff, 145 U. S. 156, and quote from the opinion of this court therein as given by Mr. Justice Brown, viz.: "While it is possible that the Stringfellow and Surles patent, might, by a slight modification, be made to perform the function of equalizing the springs which it was the object of the Augur patent to secure, that was evidently not in the mind of the patentee, and the patent is inoperative for that purpose.

Their device evidently approached very near the idea of an equalizer; but this idea did not apparently dawn upon them, nor was there anything in their patent which would have suggested it to a mechanic of ordinary intelligence, unless he were examining it for that purpose. It is not sufficient to constitute an anticipation *that the device relied upon might, by modification, be made to accomplish the function performed by the patent in question, if it were not designed by its maker nor adapted nor actually used for the performance of such functions.*"

It is respectfully submitted that appellant herein has shown himself to be an inventor, in the reasonable and full sense of the statutes.

That the unquestionable utility and benefit of his invention needs no better exemplification than the evidence contained in the record of respondent's strenuous efforts to deprive him of it, although, aside from that, it is shown to

be known and appreciated as a novel and useful article and sold by plaintiff's licensees and used from Philadelphia to Sacramento City, and from Detroit to New Orleans. The simple statement of the editor of the *Philadelphia Item* who testified (see Rec., p. 88): "I have a very valuable mare that it made her spread out, and saved her from ruining her legs," only reflects the uniform result from its use. The defendant, L. S. Lee, says that they thought the "Busch" a very valuable device (Rec., p. 195). Then is not the plaintiff's the same?

And is he not entitled under justice and equity to have the judgment in this case reversed? Appellant prays that the same may be done.

E. J. O'BRIEN,
Solicitor for Appellant.

Office Supreme Court U. S.
FILED.
DEC 14 1893
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

October Term, 1893. No. 189.

MICHAEL HAUGHEY,
Appellant,

vs.

JESSE LEE, LEWIS S. LEE and WALTER LEE, Copartners, trading under the Firm Name and Style of JESSE LEE & SONS.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

Brief and Argument for Appellee.

ERNEST HOWARD HUNTER,
Of Counsel.

Supreme Court of the United States.

MICHAEL HAUGHEY
vs.
JESSE LEE, LEWIS S. LEE and WALTER LEE, trading as JESSE LEE AND SONS.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

BRIEF FOR APPELLEE.

I.

This is a suit in equity for an injunction, damages and accounting for the alleged infringement of Letters Patent No. 379,644, dated March 20, 1888, granted to Michael Haughey.

The answer denies infringement and alleges the invalidity of the patent on the ground of:

(1) Lack of invention.

(2) Anticipation.

The Circuit Court for the Eastern District of Pennsylvania granted a motion for a preliminary injunction upon the complainant filing a bond for security in the sum of $2,500.

On final hearing the Court held the patent void for lack of invention, and dismissed the bill of complaint.

From that decision the complainant appeals.

The opinion of Judge Butler upon final hearing is reported in 48 Fed. Rep., 382 (Appeal Rec., pp. 279–281).

II.

The patent is clearly void for lack of invention, in view of the indisputed prior art. It purports to cover a device to cure the habit of interfering in horses, consisting of a leg strap adapted for attachment to the leg of the horse and a pendent striker loosely jointed to the leg strap and adapted, when the horse is in motion, to swing out tangentially to the leg strap and tap or strike the opposite leg when the horse carries his legs so closely together as to be in danger of interfering. The prior art shows a number of devices to cure the habit of interfering, consisting of a leg strap adapted for attachment to the leg of the horse, having a projecting striker or strikers connected with the leg strap by a flexible joint, and adapted to strike the opposite leg of the horse, when he carries his legs so closely together as to be in danger of interfering.

The patentee's device, therefore, differs from these interfering devices of the prior art merely in the degree of flexibility of the connection between the leg strap and striker. These differences in degree are not patentable.

Couch *vs.* Roemer, 103 U. S., 797, 798, 799.
Smith *vs.* Nichols, 21 Wall., 112, 119.
Glue Co. *vs.* Upton, 97 U. S., 3, 6.
Machine Co. *vs.* Murphy, 97 U. S., 120, 124, 125.
Atlantic Works *vs.* Brady, 107 U. S., 192, 202.
Hollister *vs.* Benedict Mfg. Co., 113 U. S., 59, 72.
Thompson *vs.* Boisellier, 114 U. S., 1, 11, 12.
Gardiner *vs.* Hertz, 118 U. S., 180, 192.
Burt *vs.* Evory, 133 U. S., 349, 358, 359.
McClain *vs.* Ortmayer, 141 U. S., 419, 426, 427.
Duer *vs.* Corbin Cabinet Lock Co., 149 U. S., 216, 222, 223.

III.

The patent is clearly void for lack of invention in view of the prior existing "kicking chain" for horses. This consisted

of a leg strap adapted for attachment to the leg of the horse, with a pendent striker loosely jointed to the leg strap, and usually consisting of a piece of chain or a piece of rope with a block of wood attached, adapted, when the horse kicked, to strike his leg and punish him. The difference between the patented interfering boot and this device is one of use only, and the use is clearly analogous. Double use is not invention.

Blake *vs.* San Francisco, 113 U. S., 679, 682, 683.

Roberts *vs.* Ryer, 91 U. S., 150, 157, 158.

Pennsylvania Railroad Co. *vs.* Locomotive Truck Co., 110 U. S., 490, 494.

Miller *vs.* Foree, 116 U. S., 22, 27.

Ansonia Co. *vs.* Electrical Supply Co., 144 U. S., 11, 17, 18.

Lovell Manufacturing Co. *vs.* Cary, 147 U. S., 623, 633.

Grant *vs.* Walter, 148 U. S., 547, 553.

IV.

The complainant's patent is clearly void, in view of the prior interfering boots and kicking chain considered together, because it is a mere substitution of the loose joint of the kicking chain for the flexible joint of the interfering boots. Mere substitution is not invention.

St. Germain *vs.* Brunswick, 135 U. S., 227, 230.

V.

The mere idea of using a *pendent* striker instead of a flexibly supported striker is not invention, because a mere idea is not patentable. A patent can be measured only by the means by which the idea is carried into effect.

Rubber Tip Pencil Co. *vs.* Howard, 20 Wall, 498, 507.

And even the mere idea of a pendent striker instead of a flexible striker is not new, because it is shown in the "kicking chain."

VI.

There is no new or different result accomplished by the use of a pendent striker over a flexibly supported projecting striker. The mode of operation of the two is the same, and is so stated in the complainant's patent. The theory that a pendent striker may sometimes strike the leg to which it is attached as well as the opposite leg, while a flexibly supported projecting striker will strike the opposite leg only, cannot avail the patentee:

First. Because, whether or not the projecting flexibly supported strikers will strike the leg to which they are attached, is only a question of degree of flexibility.

Second. Because such a mode of operation is inconsistent with the object of the invention as stated in the specification of the patent and the claim.

Third. Because, if it does exist, it is a manifest defect; and will defeat the object of the device in proportion to the extent to which it exists.

Fourth. Because it is clearly not a new result, being present in the prior "kicking chains."

Fifth. Because it is a mere theory of counsel and is not supported by the patent itself, and mere theories of counsel cannot supersede the terms of the patent.

Hicks *vs.* Kelsey, 18 Wall., 670, 674.
Yale Lock Co. *vs.* Greenleaf, 117 U. S., 55.
Marchand *vs.* Emken, 132 U. S., 195.

VII.

The patent cannot be saved by any allegations of commercial success.

First. Because commercial success is evidence only of utility and never of patentable novelty.

Rubber Tip Pencil Co. *vs.* Howard, 20 Wall., 498.
Hollister *vs.* Benedict Mfg. Co., 113 U. S., 59, 72.
McClain *vs.* Ortmayer, 141 U. S., 419, 429.
Lovell Mfg. Co. *vs.* Cary, 147 U. S., 623, 635, 636.
Grant *vs.* Walter, 148 U. S., 547, 556.
Duer *vs.* Cabinet Lock Co., 149 U. S., 216, 223, 224.

Second. Because as a matter of fact no actual commercial success has been shown.

VIII.

The complainant's patent is not infringed by the interfering devices made by the defendants because the patent is in express terms limited to a device in which the striker is "loosely jointed" to the strap which encircles the leg, whereas the defendants' device employs a striker flexibly supported by the leg strap, and is, therefore, more like the interfering devices shown in the patents of the prior art than like the device of the complainant's patent.

The terms of the complainant's patent cannot be expanded to include the complainant's device.

White *vs.* Dunbar, 119 U. S., 47, 51, 52.
Thompson *vs.* Boisellier, 114 U. S., 1, 14.
Howe Machine Co. *vs.* National Needle Co., 134 U. S., 388, 397.
Keystone Bridge Co. *vs.* Phœnix Iron Co., 95 U. S., 274, 278, 279.
James *vs.* Campbell, 104 U. S., 356, 370.
Masten *vs.* Hunt (C. C. A.), 55, Fed. Rep., 78.

And if it were so expanded it would be clearly anticipated.

IX.

The complainant's patent is anticipated by prior use at Norristown, Pennsylvania. At the Norristown race track, between 1860 and 1870, identically the same device was used for

identically the same purpose by two horse trainers, Stoughton, Clark and Alonzo Wiley. The Norristown track existed until 1871, and Clark and Wiley are dead, but the use of these devices by them is proven by the testimony of Thomas Miller, John H. B. Miller, Edwin M. Johns, Ellwood R. Snyder and John Perry. p. 147-175 incl

X.

The patent is also anticipated by the interfering boots made by Henry Deemer, Jr., the existence of which is proven by Henry Deemer, Jr., and Charles B. Mullen. p 234-259 incl

XI.

If the patent is not limited to a construction in which the striker is "loosely jointed" to the leg strap, it is anticipated by the prior use of the Dickinson boot and the horse boot by the Thirteenth and Fifteenth Streets Railway Company of Philadelphia. p 198-211 incl

Counsel for Appellees

Supreme Court of the United States.

MICHAEL HAUGHEY
vs.
JESSE LEE, LEWIS S. LEE and WALTER LEE, trading as JESSE LEE AND SONS.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

ARGUMENT FOR APPELLEE.

For the sake of convenience I shall consider this case under the following subdivisions:

First. The undisputed prior art.

Second. The complainant's patent and the question of validity in view of the undisputed prior art.

Third. The question of infringement.

Fourth. The anticipating devices.

The Circuit Court dismissed the bill of complaint on the ground that the patent was void for want of invention, in view of the prior art.

The questions of infringement and anticipation were not decided.

I.

THE UNDISPUTED PRIOR ART.

The complainant's patent is for an alleged improvement in interfering devices for horses—that is, a device for preventing or curing the habit of interfering in horses. This so-called habit of interfering is the striking of one leg by the other during motion, causing an abrasion or injury of the part struck and impeding the movement. It usually arises from defective shoeing, which, by improperly weighting the hoofs, causes the horse to carry his legs so closely together that one foot may not pass the other leg without striking it. Aside from causing injury, the habit of interfering seriously lessens the speed of a horse by impeding the rapidity of movement.

The various devices that have been designed, from time to time, to cure this habit, or to prevent injury, are practically numberless. They are all known under the general name of "horse boots."

Some of these act merely as buffers, and are in the form of covers or pads placed over the part liable to be struck. Such devices are still in general use, and may be seen any day upon the streets. They are beneficial only in preventing injury to the leg, and are not effective in curing the habit.

Others are designed more particularly for the purpose of curing the habit, and have usually been constructed in the form of a strap or band, adapted for attachment to one leg, with a "striker" projecting therefrom, adapted to tap or strike the other leg whenever the horse brings his legs so closely together that they will interfere.

The oldest and best known boot or device of the latter kind—one which is still in general use—is the "straw boot." This consists of straw, usually plaited or braided, encircling the leg with the ends projecting to form the "striker." Of the straw boot, Dr. James A. Marshall, one of the complainant's witnesses, says (page 75):

> "One of the best boots I have ever used for in-
> "terfering, and one of the first boots that I know of,
> "was a bundle of straw tied around, with three or four
> "inches passing the leg. That would make the horse
> "go a little faster, but would not interfere."

A sample straw boot is submitted. The principle upon which this boot acts is obvious from an inspection. It encircles the leg above the fetlock joint, with the projecting or striking portion extending towards the other leg; so that whenever that leg is brought so near the one which carries the boot as to be in danger of striking it, a slight blow is given and the horse is thereby warned that there is something to avoid, and as a consequence he is taught to carry his legs farther apart.

Another boot of a similar character is shown in the Davy patent No. 61,655, dated 29th January, 1867. (See Appeal Record, page 266.) This

> "consists in a strap provided with radiating bristles
> "made from hair, or other suitable material, in such a
> "manner that a boot for horses is easily obtained which
> "is easily applied and removed, and which is not
> "liable to wear out."

It was intended as an improvement upon the straw boot, as the patentee declares:

> "In order to cure horses from interfering with
> "their legs, it is a common practice to wrap around
> "the ankle of their legs small ribbons made of straw,
> "from which project some of the straws in a radial
> "direction, so that the horse will feel it when he brings
> "one leg close up to the other, and by these means he
> "is cured from the habit of interfering. These straw
> "boots wear out very quickly, and have to be renewed
> "so often that it requires much time and labor to keep
> "them in order. Its disadvantages are obviated by

"my bristle boot, which consists of a strap A, with a "suitable buckle or fastening device B, and from the "strap radiate a series of bristles C, made of hair or "other suitable material, such as broom corn, rattan "splints, fine steel wires, or similar stiff and "elastic substances. By the radiating bristles the "horse is effectually prevented from bringing one leg "close up to the other, * * * the bristles prick "or tickle without producing any injury, and a per- "fect cure is effected in a short time."

One minor objection which existed in the Davy patented boot, as well as in the old straw boot, was the lack of flexibility of the projecting portion. To overcome this, subsequent devices were designed, consisting of a leg strap adapted for attachment to the leg and provided with one or more flexible or elastic projections or prickers. Such a device is shown in the patent of Hall, 77,728, dated 12th May, 1868. (See Appeal Record, page 271.) Of this horse boot, the patentee, Hall, says:

"The purpose of my guard is to prevent the hoof "or shoe of the horse, while the animal may be in "movement, from coming in contact with and there- "by cutting or bruising or otherwise injuring the ankle "or knee of the next adjacent leg.

"In carrying out my invention, I combine with "the band or belt to go around and be buckled or fas- "tened to the leg of the horse, above the ankle, a "series of elastic projections or feelers, they being "formed and projected from such band or belt in a "manner as represented in the accompanying draw- "ings, in which A denotes the band or belt, provided "with a buckle *a* at one end, and a strap *b* at the "other, and also with a series of elastic points, pro- "jections or feelers *c c c*."

And of the operation he says:

> "When the guard is in use, the elastic feelers will "be carried by the striking leg against the other leg "of the animal, and without doing injury thereto will "cause him to keep the striking leg at a proper dis- "tance from the other leg while both are in motion.
>
> "Each projection or feeler is to be made so as to "be substantially as flexible in a vertical or oblique as "it is in a horizontal direction, it having for this pur- "pose a vertical cross-section."

Other boots of a similar character are shown in the patent to Hall and Clifford, 81,898, dated September, 1868 (Appeal Record, page 269), and in the patent of A. D. Westbrook, 160,248, dated February 23, 1875 (Appeal Record, page 273). It will be seen that the strikers or projections in these patents of Hall, Hall and Clifford, and Westbrook, are designed to have a certain amount of flexibility at their point of connection with the strap or band which is carried by the leg.

Still another form of interfering strap is shown in the patent of Dickinson, No. 220,585, dated 14th October, 1879 (Appeal Record, page 264). This device consists of a leg strap provided on its outer surface with a series of projecting loops, which are soft and yielding. An interfering strap of this character was introduced by the defendants in connection with the deposition of Joseph Blankley. This boot is marked Exhibit D. With regard to it, the witness, Joseph Blankley, testifies as follows (pages 198 and 199):

> "Q. 3. Are you more or less acquainted with "horse boots and devices used to prevent interfer- "ing?
>
> "A. I have made some few, and manufacture, "and buy and sell them. I have handled a good "many boots in my time.

"Q. 4. Will you explain more definitely what "you mean by 'some few?'

"A. Well, we have not as big a boot business "as some other people do; that is what I mean. "There are parties who make a special business of "boots and nothing else.

"Q. 5. I now hand you a horse boot, and ask you "whether you have ever seen the same, or a similar "boot before?"

"A. Yes, sir; I used to make a good many of "them.

(The horse boot identified by the witness is offered in evidence, and marked Respondent's Exhibit D.)

"Q. 6. Where did you make these boots?

"A. At Mr. Hunter's.

"Q. 7. About how many of them would you "say you have made?

"A. I cannot tell that; that would be an im- "possibility.

"Q. 8. Was it many or few?

"A. Well, we made them to order for anybody "who came along. I suppose we might have made fifty; "but I cannot positively swear to the quantity, because "we have no record of them, and it has been a good "while ago. They have gone out of the market, and "I have not made one for some time.

"Q. 9. When was it that you made these boots "at John Hunter's place?

"A. I do not suppose I had made any, until I "made that one, for ten years.

"Q. 10. Then it was prior to the year 1880, as "nearly as you can recollect?

"A. Yes, sir.

"Q. 11. Have you ever seen one of these boots "in use?

"A. Yes, sir.

"Q. 12. How was it placed upon the horse's "leg?

"A. Just buckled around it above the fetlock "joint.

"Q. 13. With the projections extending in- "wardly?

"A. Inwardly.

"Q. 14. For what were those boots intended?

"A. To keep the horse from interfering and "learning him to spread himself.

"Q. 15. Has it been customary for you, in your "business, to make different kinds of horse boots upon "order?

"A. Yes, sir; upon order.

"Q. 16. Did the person ordering the boot fur- "nish you with the pattern or style?

"A. No, sir; we used our own judgment about "that.

"Q. 17. Were boots similar to that marked Ex- "hibit D all made for one person or for different "persons?

"A. Different persons.

"Q. 18. Were they made in the regular course of "your business?

"A. Regular course of business."

The particular Exhibit D is not one of the original boots, but was a reproduction. (Page 199.)

"XQ. 24. This Exhibit D that you referred to "in your direct testimony appears to have been just "made?

"A. Yes, sir.

"XQ. 25. When was it made?

"A. Made this morning.

"XQ. 26. Who made it?

"A. One of the men in the shop, under my "direction.

"XQ. 27. And you say you made this from "your recollection of what you had made, or seen "made, ten years ago?"

"A. The last one I made ten years ago. I had "made them ever since I was an apprentice.

Another form of boot somewhat similar to the straw boot is the Stewart boot. This is illustrated in the Defendant's Exhibit Stewart Drawing. (Appeal Record, following page 262.) It consisted of a piece of rubber hose tied to the ankle of the horse in the same way as the straw boot, with the two ends projecting outward. With reference to this boot, the witness, Stewart, testifies as follows (page 203):

"Q. 12. Have you ever used a boot made out "of hose or some other character of material as a sub- "stitute for the straw boot?

"A. Yes, sir.

"Q. 13. Will you describe briefly the character "of that boot?

(Objected to as being incompetent and not sufficient foundation laid for the question.)

"A. It is made in the same manner as that (Ex- "hibit D). The hose comes round, the way I have "always used it. Sometimes I have taken old hose, "and other times I have bought lighter hose—I have "tied it together, with the two ends standing out in "the same manner as the old straw boot.

"Q. 14. I now hand you a drawing, and ask "you whether that correctly represents the boot which "you have just described?

"A. That is something like it. It was fetched "round the leg and tied there (indicating) with a

"projection out the same as the straw boot. As I "said before, you can make these longer or shorter, just "as you feel like it.

"Q. 15. And this was made of a piece of rub- "ber hose?

"A. Yes, sir.

"Q. 16. After these devices had been in use for "more or less time, did the projecting ends maintain "their lateral projecting position?

"A. That was all owing to the size of the hose. "If the hose were heavy, it would not be apt to sag "much; but if the hose were lighter, it certainly "would sag the same as anything else.

"Q. 17. The same as the projections in Exhibit D?

"A. Yes, sir. Now, understand that the hose "was cut out; there were two ends here (drawing). "but if the hose were heavy, the same as is used in "washing carriages, that would not bend much; but "if it were light, it would.

"Q. 18. Have you seen these devices with the "projecting portion hanging down or depending?

(Objected to.)

"A. I cannot say that I have. Of course, they "would get down a little bit naturally; but, as I say, "I never saw them hang in that kind of way. That "is what I call hanging, you know (indicating on Ex- "hibit D).

(The drawing identified by the witness is offered in evidence and marked Defendants' Exhibit Drawing of Stewart Device.)

"Q. 19. Will you please tell me about how long "it was that you used upon the horses of the Thir-

"teenth and Fifteenth Street Car Lines, these two "boots, which you have identified as shown in Exhibit "D, and in this sketch which has been produced?

"A. I took charge of the Thirteenth and Fif- "teenth Street Road, I think, in 1868, and we used "them off and on there that time until I left; dif- "ferent kinds; straw boots and these; and we en- "deavored not to use anything more than we could "help."

And on page 204:

"XQ. 28. It was a suggestion of the old straw "boot?

"A. Yes, sir.

"XQ. 29. And a piece of rubber hose offered a "good substitute for that?

"A. Yes, sir.

"XQ. 30. And that is what you ordinarily "used?

"A. If we had not that we bought a piece.

"XQ. 31. You have not used it in your own "business?

"A. No, sir.

"XQ. 32. And you never have used it since "you left the stable in 1875, or so?

"A. I do not think I have.

"XQ. 33. And your recollection is that it was "generally the hose used around the stable, five- "eighths inch hose?

"A. As a general thing, it was too large; it did "not come around properly, and if we had no small "hose, we generally bought a piece of hose something "of that kind.

"XQ. 34. It was merely experimental, or a "makeshift at the best, was it not?

(Objected to.)

"A. I found that it was much better than a "straw boot, because it wore better.

"XQ. 35. But that was practically the only "difference?

"A. It was to keep the horse from interfering. "When his legs touched it, it just put them out like "all other boots.

"XQ. 36. The construction was like every other "straw boot, only you used rubber instead of straw?

"Yes, sir; tied the same.

"XQ. 37. Tied with a piece of string?

"A. Tied with a piece of string or strap."

And on page 205:

"XQ. 45. Was it a very hard thing upon a "horse?

"A. No; no harder than any other boot. In fact, "we put rubber on because it was softer. It was not "as hard on a horse as straw. Of course, that is all "owing to how tight it is tied here (indicating)."

It will be seen that all of these devices employing a projection possess more or less flexibility with reference to the leg strap, and would sag or hang down to a greater or less extent.

In addition to these devices there were in general use what were known as kicking chains. These consisted of a strap fastened about the knee or ankle of the horse with a chain of greater or less length hanging from the strap and intended to strike the horse's leg if he kicked. Almost all of the witnesses testify with reference to these kicking chains. Such a chain is shown in the Respondents' Exhibit E. In this device is shown a chain twelve inches long and various witnesses testify that the chains were used both shorter and longer. These devices have been in general use for years and are still commonly employed.

Concerning this kicking chain, Thomas Miller testifies as follows (page 155):

"Q. 28. How long were the chains made for "these devices, which were used for horses that "kicked?

"A. They are generally made of different "lengths, from eight, twelve to fifteen inches long, "according to how bad they are.

"Q. 19. Then they are similar to the device "which has been offered in evidence?"

[The device offered in evidence was Exhibit A, which will be referred to more at length hereafter.]

"Just exactly the same thing, only longer; and "they have been used ever since I can remember a "horse.

"Q. 20. Have you seen such devices in use "yourself?

"A. I have put them on my own horses, just "exactly such a thing as that. Used to have a strap "and buckle around the leg and slip the chain "through."

Henry Deemer testifies (pages 235, 236):

"Q. 18. I now hand you a device entered as an "exhibit in this case, and marked Respondents' Ex-"hibit E, and ask you whether you have ever seen "anything similar to that before?

"A. Yes; made dozens of them.

"Q. 19. What are these devices used for, if you "know?

"A. With a long chain, it was made to keep a "horse from kicking; and with a short chain, it was "made to make him spread his legs."

The complainant's witness, Dr. Marshall, testifies (page 74):

"A. Yes, sir. I will answer this without a "question. I never saw, prior to the Haughey boot, "a boot that dangled or was suspended to the ankle, "for interfering or for traveling. I have seen chains "suspended from the ankle to prevent the horse from "kicking, or something like that, but that was for a "different purpose entirely—rope and block of wood, "and so forth, but never for an interfering boot."

Complainant's witness, Henry G. Headich, testifies (pages 95, 96):

"XQ. Did you ever see a leg strap for attach- "ment to a horse's leg, with a chain hanging from it?

"A. We used to make that for kicking horses. "I made them myself.

"XQ. You have made them very often, have "you not?

"A. Very often for kicking horses.

"XQ. How long did you make this chain?

"A. Generally from about twelve to fourteen "inches.

"XQ. Did you ever make it shorter than twelve "inches?

"A. No, sir; because, when a horse kicks, the "action of the chain strikes the back of its leg and "gives the benefit. If it was shorter it would not "answer the purpose.

"XQ. This kicking chain was something simi- "lar to that which I now show you?

"A. Yes, sir.

(The device shown the witness is that marked Respondents' Exhibit E.)

Complainant's witness, Thomas Morgan, a licensee under the Haughey patent, testifies (pages 105, 106):

"XQ. Have you ever seen a leg strap, with a "chain attached to it, used on a horse?

"A. I have seen a chain on a strap for kicking "purposes.

"XQ. How long was the chain?

"A. They were different lengths.

"XQ. What was the shortest length you have "seen them?

"A. I would not like to say.

"XQ. Was it eight inches?

"A. I have seen them longer.

"XQ. Have you seen them shorter?

"A. I would not like to answer that question, "because I have come in contact with so many of "these things that it would be a pretty hard thing for "me to say. To the best of my knowledge, it would "be from fourteen to eighteen inches; somewhere "around these; it depends upon what the purpose is, "heavy or light.

"XQ. You have never seen a strap, with a "piece of chain three or four inches long, used for "the purpose of speeding colts?

"A. Make that plain, and then I will answer it.

"XQ. Have you ever seen a strap, with a piece "of chain three or four inches long, used upon a colt "for any purpose whatsoever?

"A. No, sir; I do not think I have.

"XQ. Are you sure?

"A. Well, I would not want to be positive about "it, though I might have had it on for kicking, but "never for interfering or driving fast."

And again, on page 106:

"XQ. To the best of your knowledge, then, you "have never seen in use upon a horse a strap with a "chain shorter than eight inches or a foot?

"A. I would not like to go as far as that. If "I had a rule I might know the exact measurement.

"Q. It is possible, then, that you might have seen "it shorter than eight inches?

"A. No, sir; I did not say so.

"XQ. But it is possible that you may have?

"A. No, sir; it is not.

"XQ. Were those chains similar to this which I "now show you, marked Respondents' Exhibit E?

"A. Something like that; yes, sir.

From the testimony of these different witnesses (most of them the complainant's witnesses) it is clearly established that devices like Exhibit E have been in notorious public use for many years. That they were generally used to cure horses of the habit of kicking, and that the pendent chains were of various lengths, but generally about a foot long.

The Respondents' Exhibit Gilbert Device is a device of this character. It consists of a strap and a piece of chain about three inches long with a block of wood secured to the end of the chain. This device, or devices of a similar character, Mr. Gilbert testified, on March 17, 1890, he had used for four years, or or for two years before the date of the complainant's patent (page 147.) The addition of the block of wood was an idea of the witness. He had use the device for about a year before he added the block of wood (Q. 11, page 147).

A drawing of the Gilbert device will be found facing page 263 of the Record. The original device is an exhibit in the case.

This is the prior art which is not disputed. It is not the *actual* prior art, as will be hereafter shown; but it is sufficient for the present inquiry. It is the prior art accepted by the learned Judge in the Court below, and omits the various anticipating devices which the complainant will contend are not sufficiently proven.

This prior art establishes that horse boots of various kinds for ameliorating and curing the habit of interfering were well known long prior to the date of complainant's patent; that some of those boots consisted of a leg strap, or part adapted to encircle the leg of a horse above the fetlock joint, provided with a striking projection, or part connected with the strap, or leg encircling part, by a more or less flexible or elastic joint or connection, which would cause the projecting part or striker in course of time to depend or hang down more or less; and that other devices for curing the habit of kicking were used, consisting of a leg strap and a depending chain of varying length loosely jointed to the strap.

I shall now examine the complainant's patent and the alleged invention claimed therein in view of this undisputed prior art.

II.

THE COMPLAINANT'S PATENT AND THE QUESTION OF VALIDITY IN VIEW OF THE UNDISPUTED PRIOR ART.

A. Complainant's Patent. (Appeal Record, page 68.)

The Complainant's patent purports to disclose "a new and useful improvement in devices to prevent horses interfering."

It relates

> "to an improvement in interfering straps or devices "that are fastened on the horse's legs at or near the "point where the horse may strike or interfere while "moving about, usually above the pastern joint." (11: 8-12.)

The objects are,

> "First, to provide against a horse striking or interfering, by means of a pendent that will move or swing freely between his legs from a loose joint at one or more points of attachment to a strap fastened around his leg; second, to provide means for holding the pendent in the horse's leg in any desired position that it may be placed in; and third, to reduce the friction incidental to the act of striking." (11 : 13-22.)

After the usual brief reference to the drawings, the patentee states the alleged advantages of his device :

> "Of the several modes of providing against the injury to an animal caused by repeated striking of the legs—the one against the other—and commonly called 'interfering,' the aim in all of them appears to be merely to afford protection to the parts of contact without regard to effecting a permanent cure, whereby the use of an interfering strap will be rendered unnecessary. This latter object is attained by the use of my device, inasmuch as the motion of the horse's legs has the effect of giving to the pendent a swinging tangential motion, whereby the leg opposite to the one provided with the strap is touched before contact or conjunction of the two limbs with the pendent between, and the information thus communicated has the effect upon the horse of making him strive to avoid the touch of the swinging pendent. This he can only do by moving with his legs spread sufficiently apart to avoid it, and in this way he soon loses the habit of striking. (11 : 31-53.)

The patentee then proceeds to very briefly but specifically describe the construction in connection with the drawings. "The leg strap," he says,

"is a plain leather strap provided with an ordinary "buckle or means for fastening the same around the "leg of a horse." (11 : 53-56.)

Of the pendant or striker he says :

"B is the pendant, which consists of the stem "b^5, lugs b and b′, ring b^3, and annular sections b^2. "These annular sections have an opening in their "middle to admit them on the stem b^5, and they may "be made of rubber, leather, wood, or other suitable "material. This form, however, is not essential, as "the pendent may be made in one piece loosely fastened "at the top." (11 : 67-74.)

And of the manner of connecting this pendent or striker to the strap he says :

"The upper end of the stem b^5 is lapped around "the ring b^3 and fastened, and the whole is loosely "attached to the strap A by a strip b^4 passing around "the ring b^3, and fastened to the strap A by the rivet "c′. (11 : 75-79.)

There is only one claim, which reads as follows :

"The interfering device consisting of the pendent "made of rubber, wood, or other suitable material, "loosely jointed to the strap passing around the leg of "a horse, substantially in the manner shown and for "the purposes set forth."

The specification contains no description of the operation of the device other than what is contained in the descriptive paragraphs quoted.

The claim which defines the applicant's invention embraces a leg strap, and a pendant *loosely jointed* to the leg strap, and refers back to the specification and drawings for further explanation in the words "substantially in the manner shown and for the purposes set forth."

It is contended by the complainant that the words "loosely jointed to the strap" have no limiting effect, and that the claim covers a strap and a pendent striker without any limitation as to manner in which the striker is connected with the strap. "Loosely jointed," the complainant contends, means "flexibly supported."

So far as the pertinence of the prior art is concerned, it matters little whether the words "loosely jointed" be interpreted strictly or not. Whether the pendent striker be actually "loosely jointed" to the leg strap, or merely flexibly supported thereby, the claim would seem to be equally void in view of the prior art.

The idea of employing a striking portion connected with a leg strap and adapted to strike the opposite leg of a horse whenever it was brought too close was manifestly not new with the patentee. It existed in the old straw boot, and is clearly shown in the Davy patent of 1867 (page 266), the Hall patent of 1868 (page 271), the Hall and Clifford patent of 1868 (page 269), the Westbrook patent of 1875 (page 273), the Dickinson patent of 1889 (page 264), and the Young patent of 1881 (page 267). It is also clearly shown in the boot used by the Thirteenth and Fifteenth Streets Railway in Philadelphia, and shown in the "Stewart Drawing" (following page 262). Nor did it exist in the idea of making the connection between the striker and leg strap flexible, as this is clearly shown in the Hall patent of 1868 (page 271), in which it is stated:

> "Each projection or feeler is to be made so as to "be substantially as flexible in a vertical or oblique as "it is in a horizontal direction, it having for this pur- "pose a vertical cross-section."
>
> "Thus it can play freely in any direction in "which, when in use, it may be likely to be moved by "contact with the leg of the horse."

The same idea of the flexibility is also found in the Hall and Clifford patent of 1878 (page 269), the Westbrook patent

of 1875 (page 273), the Dickinson patent of 1879 (page 264), and the Stewart device. It is not in the idea of effecting a cure of interference by tapping the opposite leg and thus teaching the horse to spread his legs; for this was clearly contemplated in all of these prior devices.

The patentee has said of these prior devices:

> "The aim in all of them appears to be merely to "afford protection to the parts of contact without re- "gard to effecting a permanent cure, whereby the use "of an interfering strap will be rendered unneces- "sary."

This statement is manifestly untrue. Each one of the prior devices referred to was designed not "to afford protection to the parts of contact," but to effect a cure in identically the same manner as is contemplated by the patentee, by tapping or touching the opposite leg by means of a striker, so as to cause the horse to spread his legs to avoid the touch of the striker.

In the Davy patent of 1867 (page 266), it is stated:

> "By the radiating bristles the horse is effectually "prevented from bringing one leg close up to the "other. The bristles prick or tickle him without "producing injury, *and a perfect cure is effected in a* "*short time.*"

If the object in these devices were merely to protect the part struck, the projecting strikers would be omitted.

All that the patentee did over this prior art was to loosen the joint or connection between the leg strap and striker. Instead of having merely a flexible connection he employed a *loose joint*, so that the striker might swing more freely. From this loose joint the striker hangs, and the patentee therefore has called it "a pendent." But it operates in no different way; it produces no new or better result. It swings more freely, that is all. While the horse is in motion the pendent striker swings

out and strikes the opposite leg. It is the action of striking the opposite leg which produces the result, and it is obtained equally as well, if not better, when the striker is not pendent.

Of this operation the patentee says :

> "This latter object is obtained by the use of my "device, inasmuch as the motion of the horse's legs "has the effect of giving to the pendent a swinging "tangential motion, whereby the leg opposite to the "one provided with my strap is touched before con- "tact or conjunction of the two limbs with the pen- "dent between," etc.

In all of the prior devices the projecting striker would in time depend or hang down, more or less. It would never become an absolute pendent *loosely jointed* to the leg strap, but it would necessarily sag or hang to a greater or less extent. At least it would if the laws of gravity still hold true.

Speaking of the boots, like Exhibit D, which were used by the Thirteenth and Fifteenth Streets Railway Co. in Philadelphia, which, it will be observed, are the same substantially as the boot of the Dickinson 1879 patent, the defendants' witness, Francis Stewart, says (pages 202, 203) :

> "Q. 9. After a boot of this kind had been used "for some time, did the projecting portions maintain "their lateral position ?
>
> (Objected to as incompetent.)
>
> "A. Not always.
>
> "Q. 10. Did they at any time hang down or "depend ?
>
> (Objected to as leading and incompetent).
>
> "A. I think when wet they would certainly sag. "In wet weather, for instance."

And with reference to the boot made of rubber hose (shown in the Stewart drawing), he testifies (page 203) :

"Q. 16. After these devices had been in use for "more or less time, did the projecting ends maintain "their lateral projecting position?

"A. That was all owing to the size of the hose. "If the hose were heavy, it would not be apt to sag "much; but if the hose were lighter, it certainly "would sag, the same as anything else."

All that the patentee did was to separate this old striker from the leg strap, and connect it again with strap by a loose joint. Even the idea of employing a separate depending striker, loosely jointed to a leg strap, was not new with the patentee. It was found in the kicking devices. In this there was a pendent loosely jointed to the leg strap. The pendent was longer than the pendent shown in the patent, and it usually consisted of a piece of chain or rope, with a block of wood attached. The object was slightly different; but that was all. The object was analogous. Did it require an exercise of the inventive faculties for a horseman to substitute a loose joint for a flexible joint in the interfering boots he had about him, or to cut a couple of inches off his kicking chain, so as to reduce it to the proper length?

B. The Question of Invention.

Compared with the prior horse boots, absolutely the only difference in the patentee's device is that his striker is loose or more flexible. It may swing more freely. Compared with the kicking devices, the only difference is that the striker is shorter, and the use slightly different. Compared with both, the loose joint of the kicking chain has been substituted for the flexible joint of the prior horse boots.

It is well settled that mere differences in construction, or even new results, are not in themselves sufficient to sustain a patent. Novelty and utility are not the only criteria. Invention is an essential requirement.

Smith *vs.* Nichols, 21 Wall., 112, 119.
Glue Co. *vs.* Upton, 97 U. S., 3, 6.
Machine Co. *vs.* Murphey, 97 U. S., 120, 124, 125.
Atlantic Works *vs.* Brady, 107 U. S., 192, 202.
Hollister *vs.* Benedict Mfg. Co., 113 U. S., 59, 72.
Thompson *vs.* Boissellier, 114 U. S., 1, 11, 12.
Gardiner *vs.* Hertz, 118 U. S., 180, 192.
Burt *vs.* Evory, 133 U. S., 349, 358, 359.
McClain *vs.* Ortmayer, 141 U. S., 419, 426, 427.
Ansonia Brass and Copper Co. *vs.* Electric Supply Co., 144 U. S., 11, 17, 18.
Grant *vs.* Walter, 148 U. S., 547, 553.
Duer *vs.* Corbin Cabinet Lock Co., 149 U. S., 216, 222, 223.

Such differences as exist between the patentee's device and the prior horse boots, without considering the "kicking chain," do not amount to invention.

A very similar case is Crouch *vs.* Roemer, 103 U. S., 797. The patent, in that case, was for a shawl strap, in which the particular feature claimed was a rigid cross bar, connecting the ends of the handle, and provided with loops for the straps. Mr. Chief Justice Waite, delivering the opinion of the Court, said (pp. 798, 799):

> "It is conceded in the patent itself that shawl "straps, with handles attached to a leather cross-piece, "having loops at the ends, were old. Eustace, one of "the witnesses for the complainant, says he made his "goods with a cross-piece of the firmest leather he "could get, doubled and stitched, so as to render it "firmer still. His object clearly was to keep the "weight of the handle from drawing the ends of the "handle together so as to press against the sides of "the hand.
>
> "The testimony leaves no doubt in our minds that "handles fastened in rigid cross-bars and used to carry

"bundles were known long before the complainant's in-
"vention. Possibly in adjusting them to use, though
"this is by no means certain, the straps to bind the
"bundle were not passed through loops across the
"bar, yet it is clear beyond all question, that the bundle,
"rigid cross-bar, loops, or their equivalents, and straps,
"or their equivalents, were used in combination to keep
"together and carry one or more articles in a package
"made by piling or rolling the articles together.
"Under these circumstances it was no invention to
"stiffen by artificial means the leather cross-piece which
"had before been made as rigid as it could be by thick-
"ness, doubling and stitching. *All that was done by*
"*the inventor was to add to the degree of rigidity which*
"*had been used before.* The addition of metal or
"other substance as a stiffener of the known cross-
"piece, which had already been made rigid in a degree,
"was not invention. The substantial elements of a
"well-known structure were thus in no patentable
"way changed."

In the present case, the inventor had taken the striker of an interfering boot, which he found more or less flexibly connected with the leg strap, and has made it more flexible or loose.

All that was done by him was to add to the degree of flexibility which had been used before.

If it required no invention to add to the degree of *rigidity* of the cross-piece of a shawl strap, did it require invention to add to the degree of *flexibility* or looseness of the striker of a horse boot?

The only difference, if any, between these two cases is, that in the former case, Roemer's judgment produced an advantage, while in the latter, Haughey's has produced none; it has rather produced a defect. The loose striker dangling about the horse's leg will often strike the leg to which it is attached, and the horse

will receive a blow when he stretches his legs apart so as not to interfere, as well as when he brings them so close together that he will interfere. The horse is thus confused, and is not taught that he will only receive a blow, if he carries his legs too closely together, and will avoid it if he carries his legs spread apart.

In Smith *vs.* Nichols, 21 Wall., 112 (1874), this Court speaking through Mr. Justice Swayne said (page 119):

> "But a mere carrying forward, or new or more "extended application of the original thought, a "change only in form, proportions or degree, the sub- "stitution of equivalents, doing substantially the same "thing in the same way, by substantially the same "means with better results, is not such invention as "will sustain a patent."

The only difference that exists between the patentee's device and the prior horse boots is in the degree of flexibility of the connection between the leg strap and the striker.

But the patentee contends that in the prior horse boots, the strikers were not swinging pendents, and that the idea of making the striker pendent was new with him.

The idea of a pendent was not new with the patentee, for it is shown in the kicking chains. The only difference is in use; and double use is not invention. Granted that it was old to use a leg strap adapted for attachment to the leg of a horse and a pendent loosely jointed to the leg strap, for the purpose of curing the habit of kicking, was it invention to use the same, or an equivalent device, for the purpose of interfering?

In St. Germain *vs.* Brunswick, 135 U. S., 227 (1889), the patent was for a revolving billiard cue-rack. The ordinary cue-racks were straight stationary frames. The patentee employed two disks secured to a revolving shaft. Revolving tables were old. Mr. Chief Justice Fuller, in stating the opinion of the Court, said (page 230):

> "This case falls within the familiar rule that "the application of an old process, or machine or ap- "paratus to a similar or analogous subject without "change in the manner of application, and no result "substantially distinct in its nature, will not sustain a "patent, although the new form of result may not "have before been contemplated."

In Blake *vs.* San Francisco, 113 U. S., 679 (1884), Mr. Justice Woods, after stating the foregoing principle, said (page 682, 683):

> "It follows from this principle that where the "public has acquired in any way the right to use a "machine or device for a particular purpose, it has the "right to use it for all the like purposes to which it "can be applied, and no one can take out a patent to "cover the application of the device to a similar pur- "pose.
>
> "If there is any qualification of this rule, it is "that if a new and different result is obtained by a "new application of an invention, such new applica- "tion may be patented as an improvement on the "original invention; but if the result claimed as new "is the same in character as the original result, it will "not be deemed a new result for this purpose."

The same principle that double use is not invention has been repeatedly stated by this Court.

Roberts *vs.* Ryer, 91 U. S., 150, 157, 158.

Pennsylvania Railroad Co. *vs.* Locomotive Truck Co., 110 U. S., 490 (1883), 494.

Miller *vs.* Force, 116 U. S., 22 (1885), 27.

Ansonia Co. *vs.* Electrical Supply Co., 144 U. S., 11, (1891) 17, 18.

Lovell Manfg. Co. *vs.* Cary, 147 U. S., 623 (1892), 633.

Grant *vs.* Walter, 148 U. S., 547, 553.

Even if the idea of making the striker loose and depending had been new, if the kicking chain did not exist, the claim could not be sustained.

A mere idea cannot in itself be the subject of a patent. It is the means by which the idea is put into effect.

In Rubber Tip Pencil Co. *vs.* Howard 20 Wall., 498 (1874), Mr. Justice Waite said (page 507):

> "An idea of itself is not patentable, but a new
> "device by which it may be made practically useful is.
> "The idea of this patentee was a good one, but his de-
> "vice to give it effect, though useful, was not new."

Even if the idea of making the striker of an interfering boot depend were new, the patent cannot be sustained, because the means by which that idea was put into effect consisted merely in making the connecting joint more flexible. It was a simple change in degree.

But, as it has been pointed out, the idea was not new, because a pendent striker loosely attached to a leg strap existed in the kicking chain, and was generally known. Compared with this kicking chain the novelty of complainant's patent *consisted merely in the idea of using a kicking chain for interfering purposes.*

To create the idea that some invention was exercised in the production of the complainant's device, it has been urged, first, that a new function or result is obtained from the use of a loosely jointed or pendent striker that was not possessed by the old striker; second, that the patented device has been commercially successful.

C. The Alleged New Result Possessed by a Loosely Jointed Striker.

It has been urged that as the striker of the complainant's patent is loosely jointed to the leg strap, it possesses the capabil-

ity of striking that leg to which it is attached, as well as the other or opposite leg. This, it is urged, is a new result not possessed by the old horse boots.

Not only is this not a new result which can be urged as an advantage, but, so far as it may be possessed by the device, it is a *positive defect*. The idea of benefit or advantage is a mere theory on the part of counsel, advanced in an effort to inject life into the patent.

The object of these interfering devices is to cure the habit. For this purpose the striker employed is so arranged that whenever the horse brings his legs so close together as to be in danger of interfering, he receives a blow or tap on the leg from the striker, and, *to avoid the blow, he is taught to spread his legs apart.* To teach the horse this, the device should obviously strike only when the horse is in danger of interfering. The animal learns that whenever he brings his legs close together he receives a blow, and that when he keeps them spread apart he does not receive a blow, and consequently he is, in the course of time, taught to keep his legs constantly apart, and thus the habit of interfering is cured.

Now when the striker taps the leg to which it is attached as well as the opposite leg, that is to say, when the striker taps both legs indiscriminately, the horse becomes confused. He receives a blow when he brings his legs too close together and he receives a blow when he spreads them apart. The theory that there is some inductive reasoning upon the part of the horse, whereby he is able to discriminate between the blows that count and the blows that do not count, is hardly credible. The fact is that this capability of the loosely jointed striker to sometimes strike the leg to which it is attached, is a defect in the patentee's device, not a serious one perhaps, but nevertheless a defect. The device is not intended to act in that way.

But the most complete refutation of this theory of working is to be found in the patent itself. There is nothing at all in the patent from beginning to end that could be twisted into a

suggestion of this theoretical operation. On the contrary, the patentee explicitly states the object and mode of operation of his device. He says :

> "This latter object [*i. e.*, curing the habit of in-
> "terfering] is attained by the use of my device, inas-
> "much as the motion of the horse's legs has the effect
> "of giving to the pendent a swinging tangential
> "motion, whereby the leg opposite to the one pro-
> "vided with my strap is touched before contact or
> "conjunction of the two limbs with the pendent
> "between, and the information thus communicated
> "has the effect upon the horse of making him strive
> "to avoid the touch of the swinging pendent. This
> "he can only do by moving with his legs spread suf-
> "ficiently apart to avoid it, and in this way he soon
> "loses the habit of striking."

There is nothing in this statement about striking the leg which carries the strap. Yet this, we are told, is the great merit, the new feature of the patentee's device that makes it differ from prior devices. If such a thing were true, would it not be stated in the patent? Not only is it not stated in the patent, but what is stated as to the mode of operation is absolutely inconsistent with it. The pendent is not intended to strike the leg to which it is attached, and if it occasionally does strike that leg it is operating defectively.

The complainant's expert witness, Dr. James A. Marshall, a veterinary surgeon, in explaining the operation of the complainant's boots, compares it with the old straw boot, and says (page 75) :

> "In one leg passing another in that manner
> "(indicating), in place of striking the leg the prob-
> "ability is that the projection is more likely to hit
> "those rolls and pass off without bruising or skinning
> "the leg. At the same time, in a motion of that

"kind the point of that striking the leg, it is more "likely to make them get away from it, and the horse "is apt to spread. This is why I prefer it to a pad. "A pad would protect the leg, but it would not be "liable to make him spread the leg, but this strikes "the leg and makes them go wider. That is where "I think it is better in striking the leg in that manner "(indicating), spreading the legs, not so liable to hit. "One of the boots I have ever used for interfering, "and one of the first boots that I know of, was a bun- "dle of straw tied around with three or four inches "passing the leg. That would naturally make the "horse go a little wider, and would not interfere. "The action is similar to this."

Dr. Marshall knew nothing about this theory of inductive reasoning on the part of a horse. He knew nothing about striking the leg to which the strap was attached.

It is well settled that the theories of counsel as to the working of a patented invention are not to supersede the terms of the patent. Such theories are clearly *a posterori:*

Hicks *vs.* Kelsey, 18 Wall., 670, 674 (1873).
Yale Lock Co. *vs.* Greenleaf, 117 U. S., 55 (1885).
Marchand *vs.* Emken, 132 U. S., 195 (1889).

There is clearly nothing in this theory of the tapping of the leg to which the device is attached. There is nothing said of it in the patent. It would be a defect, so far as it existed. And even the idea itself is found in the kicking chain. In this device the object is essentially to strike the leg to which the strap is attached, so that it could not benefit the patentee even if his counsel's theory could be accepted, since the idea is an old one. As the applicant's device is a mere double use of the strap and pendent chain used to cure kicking, it possesses the feature of the kicking chain in occasionally striking the leg to which it is attached. But in possessing that feature it possesses a clear defect, and does not possess any new feature.

D. The Allegation of Commercial Success.

It has now become customary in almost all patent cases, where lack of invention exists in the patented device, to endeavor to show commercial success, on the theory that such a showing may take the place of invention.

Now, while it has been held that in a doubtful case commercial success may be sufficient to resolve the doubt in favor of validity, it has been repeatedly ruled that no amount of commercial success is sufficient to supersede the necessity of invention.

Rubber Tip Pencil Co. *vs.* Howard, 20 Wall., 498 (1874.)

Hollister *vs.* Benedict Mfg. Co., 113 U. S., 59 (1884), 72.

McClain *vs.* Ortmayer, 141 U. S., 419 (1891) 429.

Lovell Mfg. Co. *vs.* Cary, 147 U. S., 623 (1892), 635, 636.

Grant *vs.* Walter, 148 U. S., 547 (1892), 556.

Duer *vs.* Corbin Cabinet Lock Co., 149 U. S., 216 (1893), 223, 224.

In McClain *vs.* Ortmayer, Mr. Justice Brown said (page 429):

> "While this court has held in an number of "cases, even so late as Magowan *vs.* The New York "Belting and Packing Co., *ante*, 332, decided at the "present term, that in a doubtful case the fact that a "patented article has gone into general use is evidence "of its utility, it is not conclusive even of that, much "less of its patentable novelty."

In Lovell Manufacturing Co. *vs.* Cary, 147 U. S., 623, Mr. Justice Blatchford said (pages 635, 636):

> "It is contended, however, by the plaintiffs that the "applicability of the former process is contradicted by "the fact that no one has used them for the manufac-"ture of furniture or furniture springs, and that as

"10 Int. In what cities have you established "agencies for this device?

"A. In Philadelphia, Milwaukee, Chicago, Sac- "ramento, New Orleans and St. Louis.

"11 Int. About how many of them have you "placed in use, or how many of them have been used "under your letters patent since the issuance thereof? "State approximately.

"A. Well, I think possibly about ten thousand. "Between eight and ten thousand. I couldn't exactly "state the precise number, because I distributed a "great many without keeping any account of them."

Not very conclusive evidence of utility this. By giving away, selling them, and advertising them extensively in trade and in local journals, he has disposed of between eight and ten thousand. To say the least, this is not remarkably successful. The devices have not displaced other forms of interfering boots. They are neatly made, reasonably cheap, and by judicious advertising a few thousand of them have been disposed of. The allegations of commercial success therefore amounts to nothing; first, because no particular commercial success has been shown; and, second, because, if it had been shown, it would at best be only possible evidence of utility, and could not establish inventive novelty, and the want of inventive novelty in this case is clear.

III.

THE QUESTION OF INFRINGEMENT.

In the opinion filed in the Circuit Court the question of infringement was not passed upon; but as a preliminary injunction had been previously granted by the Court, it is fair to say that this question has been resolved in favor of the complainant.

But, as a matter of fact, it is believed that taking the patent as it stands, conceding for the sake of the present inquiry that it might have some novelty, the defendant's interfering device does not infringe. To consider this question it becomes necessary to construe the complainant's patent. What does it purport to cover?

The claim reads:

> "The interference device consisting of the pen-
> "dent made of rubber, wood, or other suitable ma-
> "terial, loosely jointed to the strap passing around the
> "leg of the horse, substantially in the manner shown
> "and for the purpose set forth."

In the drawings accompanying the patent this device is shown as a leg strap A, provided with a loop b^4, and a pendent striker consisting of a stem connected with the loop b^4 by a ring b^3. The loop b^4 and ring b^3 are the means by which the striker is "loosely jointed" to the strap A. The striker is a separate piece from the leg strap and is loosely jointed to it. The loose joint allows the striker to swing freely.

The patentee says:

> "The object of my improvement is, first, to pro-
> "vide against a horse striking or interfering, by
> "means of a pendent that will move and swing freely
> "between his legs from a *loose joint* at one or more
> "points of attachment to a strap fastened around his
> "leg."

It will be remembered that the prior art shows many interfering devices having a striker attached to a leg strap by a *flexible* joint, notably the Dickinson patent of 1879 (Appeal Record, page 264), and the Hall patent of 1868 (Appeal Record, page 271), in the latter of which the flexibility is particularly referred to at the bottom of page 271 and the top of page 272. Now, did the supposed invention, which the complainant set forth in

his patent, consist in the mere extent of the flexibility of this joint or connection between the striker and the leg strap, or in making the connection a loose joint so that the striker would necessarily depend?

The patent does not pretend to cover anything but a loose joint between the parts; no other possible construction is shown or suggested. Not only are the words "loose joint" and "loosely jointed" used in the specification wherein the connection is mentioned, but they appear also in the claim.

Not only is it well settled that when the terms of a claim are clear, resort cannot be had to the specification for the purpose of enlarging the scope.

White *vs.* Dunbar, 119 U. S., 47 (1886), 51, 52.

Howe Machine Co. *vs.* National Needle Co., 134 U. S., 388 (1889), 397.

Thompson *vs.* Boissellier, 114 U. S., 1, 14.

Keystone Bridge Co. *vs.* Phœnix Iron Co., 95 U. S., 274, 278.

James *vs.* Campbell, 104 U. S., 356, 370.

Masten *vs.* Hunt (C. C. A.), 55 Fed. Rep., 78 (1893).

But in the present case there is absolutely nothing in the specification to support the attempted enlargement. The complainant insists that the words "loosely jointed" mean nothing more than flexibly connected with sufficient flexibility to permit the striker to hang to a greater or less extent.

In the respondents' device the striker is not loosely jointed to the leg strap. The leg strap encircles the leg of the horse, and has a looped portion which projects through a pad and constitutes the striker. On the striker some of the well-known rubber balls are placed, as in the construction shown in Fig. 1 of the complainant's patent. That portion of the leg strap which encircles the leg of the horse is encased in a piece of rubber tubing for the purpose of protecting the leg from the pressure of the leg strap. There is no loose joint between the striker and

leg strap. The two are formed of one continuous piece. There is a flexible union between the part which forms the striker and the part which constitutes the leg strap. An illustration of the respondents' device will be found in the Busch patent at pages 260–262 of the Appeal Record.

This projecting striker of the respondents' device is not intended to depend or hang down, but to project out laterally, so as to be always in position to strike the opposite leg to that by which it is carried, and never to strike the leg to which it is attached. The object is identically the same as in the old straw boot, the Stewart horse boot, the Dickinson boot, Hall boot, etc., and also as in the Haughey boot, except that in the case of the latter the striker swings from a loose joint and not from a flexible joint. The loose joint in the latter device permits the striker to have a free movement, and is designed to give it the "swinging, tangential movement" spoken of in the patent.

Considerable stress has been laid upon the fact that in some of the respondents' boots the striker has hung down to a considerable extent and has become more or less pendent. This is undoubtedly true. After considerable use the leather becomes soft, and does not possess its original firmness, so that it ceases to retain the striker in a lateral position. So will the other boots, such as the Dickinson boot and the Stewart horse boot, in time have their strikers more or less pendent. It is purely a matter of degree, and will largely depend upon the weight of the striker. So far as the respondents' interfering device is conceived, it is not desirable that it should hang down to any great extent, but it is unquestionably true that in some cases the leather has lost its natural rigidity from use, and as a consequence the striker has hung down owing to the flexibility of the leather of which it is formed.

It will not be contended by the complainant's counsel that the respondents' boot would infringe if the striker did not depend or become pendent. So it will be seen that the question of the

should permit the striker to drop a fraction below his pre-empted angle of inclination.

The respondents have not attempted to pirate Mr. Haughey's invention. They have been making their devices under the Busch patent, No. 423,854, dated March 18, 1890 (Appeal Record, pages 260–262). Mr. Lewis S. Lee, of the respondent's firm, testifies on this subject as follows on pages 181 and 182 of the Appeal Record :

> "Q. 11. I would call your attention to the fact "that the alleged infringing devices manufactured by "the defendants in this suit are marked 'Patent "applied for.' Can you tell me, from your own "knowledge, whether these devices were made under "an application for letters patent?
>
> (Question objected to as incompentent, the Record being the best evidence).
>
> "A. An application was made for a patent on "the device, and it was on that account that the boots "were stamped 'Patent applied for.'
>
> "Q. 12. Are you aware whether letters patent "have been granted upon that application?
>
> (Same objection as before.)
>
> "A. Yes, sir.
>
> "Q. 13. I produce here Letters Patent No. "423,854, granted Charles L. Busch, for an improve- "ment in horse boots, and ask you whether this is "the patent which was granted upon the application "under which these alleged infringing devices were "made, and in accordance with which the said alleged "infringing devices were marked 'Patent applied for,' "as you have testified?
>
> (Objected to as incompetent.)
>
> "A. Yes, sir ; this is the patent.

(Counsel for the respondents offers in evidence a printed copy of the letters patent referred to, to wit, Letters Patent No. 423,854, Charles L. Busch, March 18, 1890, and the same is marked Respondent's Exhibit Busch Patent.)

"Q. 14. Before the firm of Jesse Lee & Sons, of "which you are a member, entered upon the manu- "facture of these so-called Busch boots, did you "inquire into your right to so manufacture them?

(Objected to as incompetent.)

"A. Mr. Busch, in offering the patent to us, "assured us that he had made inquiry, and had been "informed by a patent attorney that the construction "which he exhibited was not an infringement upon "anybody's patent. We afterwards made inquiry "ourselves, and received similar assurance. This, "in conjunction with our positive knowledge that "swinging pendents had been used before, satisfied us "that we would not be entrenching upon anyone's "rights by manufacturing and selling the device "shown by Mr. Busch. I think that covers the "question you asked me. (Continuing.) The latter "construction being quite different in its details from "the boot we had seen and known as the Haughey "boot.

"Q. 15. I observe that these letters patent to "Charles L. Busch, heretofore referred to, are granted "to Walter Lee. Is this the same Walter Lee who "is a member of the firm of Jesse Lee & Sons?

"A. Yes, sir.

"Q. 16. In your business in selling the so-called "Busch boot did you ever represent, or, so far as you "are aware, did any of your firm or salesmen repre- "sent this Busch boot as being the same as the so- "called Haughey boot.

> "A. On the contrary, our salesmen were in-
> "structed to point out the distinctive features of our
> "boot, and to sell it upon its evident merits. We our-
> "selves never represented it as the same or even as
> "similar to the Haughey boot. We considered it a
> "much superior article in every respect."

The apparent similarity between the Haughey boot and the defendants' device is due to the fact that they both put the rubber balls or disks on the striker. The rubber balls or disks are, however, a well-known article of commerce, and may be purchased at the shop of any dealer in horse goods. These balls are shown, for instance, in the patent of Brinckerhoff, dated December 22, 1868 (Appeal Record, page 275). They are in common use, and have been for years. The patentee does not claim any invention in the particular construction of his striker. In his claim, he says it may be

> "of rubber wood, or other suitable material."

And in the application he says:

> "This form, however, is not essential, as the
> "pendent may be made in one piece *loosely fastened* at
> "the top."

And he so shows it in Fig. 2.

The use of the rubber balls has nothing whatever to do with the supposed invention or with the question of infringement.

IV.

THE ANTICIPATING DEVICES.

The anticipating devices constitute the disputed prior art which the complainant will contend has not been sufficiently established. It is possibly hardly worth while to go into an

extended examination of these anticipating devices in view of the fact that the complainant's patent would seem to be absolutely void in view of the prior art, with reference to which there is no dispute, but in order that the entire evidence may be presented to the Court, these prior anticipating devices and the evidence upon them will be briefly considered.

They embrace: First, the prior use at Norristown, Pa.; and, second, the prior use in Philadelphia by what has been called the Deemer device.

The Prior Use at Norristown, Pennsylvania. These prior devices are shown in respondents' Exhibits A and B, which are manifest anticipations of the complainant's patent, no matter how it may be construed. Devices of this character were used at Norristown, Pa., prior to 1870, by Alonzo Wiley and Stoughton Clark, horse trainers at the Norristown track. Exhibit A consists of a leg strap and a pendent chain. It is identically like the "kicking chains," except that the chain is shorter. Exhibit B has a pendent of rubber balls on a piece of rope.

Thomas Miller was a blacksmith in Norristown during the sixties, and during that time he did the horseshoeing for the trainers at the Norristown track. He identifies the Exhibit A, and testifies between 1860 and 1870 he was in the habit of cutting small lengths of chain for the trainers for those devices (Qs. 7 and 8, page 153). He never saw them in use on the track in Norristown, himself, for, as he testifies in answer to Q. 9:

> "I cannot say that I seen them in use, but they say "those trainers on our track at Norristown—I say our "track, because I was interested in it, owned some "portion of it—used to come up to my shop and get "pieces of chain, and I would ask them what they "wanted it for, and they would say for using to put "on horses to spread them and keeping them from "cutting or not traveling square. Sometimes they "would use it on one leg and not the other, when they "didn't just travel square. Now, that is the most I

"can say about the chain; whether they have used it "for that purpose or not I cannot say, but I have cut "off many a chain for them, three, four or five inches "long, just as they wanted them—six or eight inches "long; sometimes three or four inches long."

The reason he did not see this device in use he explains in answer to Q. 13, on page 154:

"The reason I did not get to see them was they "generally trained their horses in the morning, and I "generally done it in the evenings on my own; so, of "course, I never seen many of those trainers out with "them, or anything of that kind."

He also testifies as follows on pages 154 and 155:

"Q. 15. Did Wiley ever make one of these "devices?

"A. I cannot say that he ever made any as I "saw. I never saw them on. As I said, I cut the "chains, and I knew they wanted them for that pur- "pose.

"Q. 16. Did you ever cut one of these chains "for Wiley?

"A. Yes, sir.

"Q. 17. And he told you they were for these "purposes?

"A. Yes, sir; and then they had longer ones "cut to put around above the knee joint."

It was not on a single occasion or a few occasions that Thomas Miller cut these short chains for the trainers at Norristown, for he testifies, on cross-examination, as follows, on page 156:

"XQ. 36. Can you recall at this distance of time, "from 1870 to 1890, any special instance where you "made or cut off a piece of chain for any person

"applying to you for it, who said to you that he "wanted it to prevent interfering in a horse?

"A. I cannot specify no time that I have done "any particular job, but it was occasionally done "through the summer season of several years.

"XQ. 37. Can you recall a single individual "instance, giving the name of the party.

"Well, I think Mr. Wiley called very fre- "quently, and I think Mr. Stote Clark, and I think "Alonzo Miller, if I ain't very much mistaken."

John H. B. Miller, son of Thomas, was as a boy during the sixties, in the habit of spending much of his time about the track of the Norristown trainers. He indentifies the respondent's Exhibit A, and states that he has seen devices before at Norristown (Qs. 4, 5 and 6, page 158), and that it was used by a man by the name of Wiley (Q. 7, page 158). He frequently saw Wiley use these devices, and put them upon the leg of a horse himself (Q. 13, page 159). The device marked Exhibit B, which is almost identically the complainant's construction, John Miller testifies was similar to one used by Wiley instead of the chain, except that in the devices used by Wiley the balls forming the hanging striker were made of wood and not of rubber (Qs. 17, 18, 21, page 159). When asked how often he saw them, he answered in answer to XQ. 76, page 163:

"I cannot say how often. He would use them "every now and then on different horses. We used to "have a stable full of horses to handle."

He testifies, however, that he has seen a device like Exhibit A used more frequently than the device with the balls, marked Exhibit B. This testimony will be found on page 168:

"Q. 148. How many times did you see this spe- "cific thing, to the best of your recollection, that I "now show you (Exhibit B).

"A. I won't say how often, but I have seen him "use it more than that (referring to Exhibit A).

"Q. 149. Can you give us an estimate, accord- "ing to your best recollection, of how often you have "seen him use a thing like Exhibit B?

"A. I have seen him use it at different times, but "I won't say how many times; but this I have seen "him use (Exhibit A), more than that (Exhibit B)."

On page 170, he testifies as follows:

"XQ. 190. You saw him use Exhibit B a few "times?

"A. Yes, sir.

"XQ. 191. How many times,—twice or three "times?

"A. A little oftener than that.

"XQ. 192. What do you mean by a few times; "how many times do you mean?

"A. Eight or ten times; may be less, probably "more; I cannot say how often. I seen the horses "going along more or less; seen him jogging along. "I never seen what color of a horse he had, or what "kind of a harness he had on or not. As I say, I "seen him use this (Exhibit A) more than that (Ex- "hibit B). I used that (Exhibit B) myself not long "ago; I bought a pair.

"XQ. 193. Whom did you buy it from.

"A. One of Thomas Morgan's men.

"XQ. 194. That was one of the Haughey boots?

"A. Yes, sir; bought it from Mr. Morgan's "place."

John Perry, of Norristown, Pa., testifies that Wiley once showed him one of these devices, which consisted of a heel boot with about three links of a dog chain hanging loosely from it, with a small ball on the end. (Qs. 6, 7 and 8, pages 147 and 148.)

E. M. Johns, of Norristown, Pa., also testified that he saw a similar device, consisting of a chain with a little ball attached to the end of the chain on a "shin boot," in the year 1868 and 1869, in the possession of Stote Clark, of Norristown, and that he saw it used upon one occasion upon a horse owned by the horse trainers at the Globe track at Norristown. (Pages 149, and 151.)

Ellwood R. Snyder also testifies that he saw a pair of these horse boots (pages 151 and 152). He did not see them used.

Unfortunately both Stote Clark and Wiley, the horse trainers referred to by these witnesses, are dead and it has been impossible therefore to obtain their evidence. (John Perry, Q. 2, page 147; J. H. B. Miller, XQs. 123, 124, page 166.) But there would seem to be no question that devices of this kind were commonly used at the Norristown track prior to 1870. There is the testimony of the blacksmith, Miller, who was in the habit of cutting the pieces of chain for the trainers, and he testifies that the trainers told him the purpose for which they wanted the chains. There is the testimony of John H. B. Miller, Perry, Johns and Snyder, who either personally saw the things in use, or were told the purpose for which they were intended. It cannot be contended that this was merely an experimental use, for Thomas Miller testifies that he was in the habit of cutting these chains for Wiley. John Miller testifies on page 160 as follows:

> "Q. 24. Did he use these devices, to which you "have referred, in his business as a horse trainer?
>
> "A. Yes, sir.
>
> "Q. 25. And it was his custom to use them?
>
> "A. It was his custom to use them according to "how a horse hung himself.
>
> "Q. 26. Whenever a horse needed it?
>
> "A. Yes, sir; put that on, or anything else; "the same as they do nowadays; anything at all; "they used them or any other kind of a boot, smooth- "ing boot, or according to what the horse required.

"Q. 27. According to what the peculiarities of "the horse required?

"A. Yes, sir.

And again he testifies, on page 174:

"R-DQ. 243. And he commonly used devices "of this kind in his business as a horse trainer?

"A. Yes, sir; this kind and all other kinds of "boots.

"R-DQ. 244. He used this kind of a device "just as he would use the other kind of horse boots, "accordingly as whether or not the horse needed it.

"A. Yes, sir.

The complainant's counsel endeavored to obtain from Mr. Miller admission that these devices were of an experimental nature. On page 172 he was asked:

"XQ. 214. And you understood that it was "merely experimental with Wiley?

"A. No, it was perfect work for him. It was "for him to gait them and square them away. If a "horse didn't give satisfaction, that is what he put "them on for."

He also testifies that Wiley was not experimenting with these devices to find out whether the striker made of a chain or other similar device could be used, but that he varied the weight of the chain according to the horse which he had in hand. In answer to R-DQ. 242, on page 174, he testifies:

"He was not experimenting himself individually; "he knowed they would work on a horse, but he tried "them on a horse to see if they would work on that "animal, and see which one the horse required, lighter "or heavier. He would get them to go on one leg "perhaps all right, and then find out that they required "one a little heavier, and put them on to straighten "their legs away."

An experimental device is not one that can be used continually through a number of years by a horse trainer in his ordinary business, and Thomas Miller, as has been pointed out, testifies that he cut these short lengths of chain for this interfering device during the summers of several years; and John Miller testifies that they were used whenever they were necessary. It may be asked why, if these things were generally used by the trainers at the Norristown track prior to 1870, they are not still in use. The answer to this is not difficult to find. The Norristown track was abandoned in 1871 or 1872. Thomas Miller, in his answer to Q. 8 (page 153), says it was sold for a brickyard in 1871 or 1872. The general use of these devices on that track, while it was in existence, has been clearly shown and establishes a clear anticipation of the complainant's device. But, in addition to this testimony on the part of these witnesses as to the use of devices of this kind at the Norristown track, H. Deemer, a harnessmaker, of Philadelphia, testifies that he has seen devices like respondent's Exhibit A, and that devices of this kind were commonly used years ago. On pages 235 and 236 Mr. Deemer testifies as follows, with reference to the strap and pendent chain marked as Exhibit E, and known as the "kicking device:"

> "Q. 18. I now hand you a device entered as an "exhibit in this case, and marked respondents' Ex- "hibit E, and ask you whether you have ever seen "anything similar to that before?
>
> "A. Yes; made dozens of them.
>
> "Q. 19. What were these devices used for, if you know?
>
> "A. With a long chain it was made to keep a "horse from kicking; *and with a short chain it was* "*made to make him spread his legs.*
>
> "Q. 20. About how short was the chain which "you speak of as the short chain?

"A. The one that was made for the kicking chain "was made about a foot long, a great deal heavier "than that one. If it was shortened it would be "from four to five inches.

"Q. 21. I now hand you a device which is "marked as an exhibit in this case, respondents' "Exhibit A, and ask you whether that is substantially "what you described as the device with a short "chain?

(Question objected to as incompetent and for the reason that the question does not confine itself to the pleadings.)

"A. The same thing, only with a heavier chain.

"Q. 22. Have you ever seen such devices as this, "marked respondents' Exhibit A and respondents' "Exhibit E, in use on a horse?

(Same objection as before.)

"A. Yes, I have.

"Q. 23. How long did you make such devices as "these, and how long ago did you see them used?

"A. Well, we made a chain boot inside of ten "years.

"Q. 24. Have you seen many or few of these?

"A. I guess I have seen a good many. They "used to be quite common years ago.

"Q. 25. Will you describe how these devices "were attached to the horse's leg?

"A. Just buckled round above the fetlock "joint."

The Deemer Device.

The Deemer device is the interfering boot marked Exhibit C. This consists of a leg strap and a pendent formed of a piece

of rubber hose, connected with the leg strap by a piece of leather passed through the hose and fastened about the strap. This device has a pendent loosely jointed to the strap passing about the leg of the horse exactly as specified in the complainant's patent.

Henry Deemer, Jr., is a harnessmaker at Philadelphia, and was, as he says, born in the business (Q. 2, pages 234, 5.)

With reference to the device marked Exhibit C, he testifies as follows, on page 235 :

"Q. 6. When did you first see that so-called "Haughey boot, as nearly as you can recollect?

"A. I cannot give the exact date; I suppose "maybe to years ago.

"Q. 7. Prior to that time, had you ever heard "of or seen a horse boot employing a leg strap and a "pendent portion carried thereby?

"A. I had.

"Q. 8. Will you please briefly describe that "boot?

"A. I helped to make a boot of that kind thirty "years before. I had it made by one of the men in "the store.

"Q. 9. I now hand you a device, which is "entered as an exhibit in this case, and marked de- "fendants' Exhibit C, and ask you whether you have "ever seen such a device as that before?

"A. Yes; I have.

"Q. 10. Is this the device to which you have "just referred in your previous answer?

"A. The same identical idea.

"Q. 11. When did you first make, or have "made, such a device as this?

"A. I could not tell that. It has been thirty years "at least.

"Q. 12. Did you make more than one of these "boots?

"A. Oh, yes; lots of them; that is a good many. "I could not tell in that time, because, as I said be- "fore, harnessmakers only made boots on the order "of blacksmiths.

"Q. 13. For whom were these boots made?

"A. John Chestnut.

"Q. 14. Who was John Chestnut?

"A. He was a blacksmith and farrier.

"Q. 15. Do you know where John Chestnut "now is?

"A. He is dead.

"Q. 16. When did you last make, or have made, "a boot of this character?

"A. I think we made one of them about five "years ago.

"Q. 17. Were these boots made in the regular "course of your business?

"A. Regular course of business; yes."

The particular Exhibit C, which is in evidence, is, of course, a reproduction of the original device. It was as a reproduction in Mr. Deemer's shop (XQs. 53, 54, *et seq.*, page 238). This device was not in any way in the nature of an experiment. Mr. Deemer says he had a great many of them made (Q. 12, page 235), and they were made during several years.

"XQ. 101. Prior to making it for this man that "you cannot name, which you think was done about "five years ago, when did you last see a specimen like "Exhibit C, up to that time?

"A. I seen it twenty-five years ago.

"XQ. 102. You fix that as the time in answer "to my question?

"A. Well, you say the last time I seen it.

"XQ. 103. Yes.

"A. I seen it when I first made it. That has "been thirty years ago; and I guess I seen it for

"*seven or eight or ten years* afterwards." (Appeal Record, page 240).

Mr. Deemer cannot tell the number of these boots he made for Chestnut, but says it may have been between thirty and fifty (XQ. 173, page 245). On page 250 he testifies:

"R-DQ. 251. Did you make them more than "once during this period that you made them for "Chestnut?

"A. Yes. I had made several dozens, perhaps.

"R-DQ. 252. And it was during a period of "several years?

"A. Yes, sir.

"R-DQ. 254. He ordered them from time to "time, when he needed them?

"A. As he had a horse to put them on."

Mr. Deemer is corroborated by Charles B. Mullen, who testifies that at least twenty years before he saw several devices like Exhibit C in Henry Deemer's shop (Qs. 4–9, page 253). It was before he became a driver for Matzinger Bros., and he has been driving for them twenty-four years (XQs. 11-15, pages 253 and 254).

On page 253 he testifies as follows:

"Q. 7. Did you see more than one of these "boots?

"A. I do not know how many he had. He had "five or six in there. He was making them at the time I "seen him.

"Q. 8. Did you ask him for whom he was mak- "ing them?

"A. I asked him at first what they were for, "and he said that they were an interfering boot; and "then I asked him who he was making them for, and "he said a man by the name of Chestnut."

This Deemer device, Exhibit C, is clearly an anticipation of the complainant's patent.

To rebut this testimony, a number of harnessmakers were called in behalf of the complainant, who testified that they never saw a device similar to Exhibit C. Obviously mere negative testimony of this kind cannot outweigh the clear and positive statements of Mr. Deemer and Mr. Mullen, who are wholly disinterested persons.

Anticipation by the Prior Use by the Thirteenth and Fifteenth Streets Railway Company of Philadelphia.

The Stewart Device. If the claim of the Haughey patent is not specifically limited to pendent striker loosely jointed to the leg strap, it is clearly anticipated by the Stewart hose boot used by the Thirteenth and Fifteenth Streets Railway Company of Philadelphia.

This Stewart hose boot is shown in the Defendants' Exhibit Stewart Drawing, following page 262 of the Appeal Record. A sample boot of this character is submitted.

This device consists of a piece of rubber tube or hose placed around the leg of the horse and having its two ends tied together to form a projecting striker.

Mr. Haughey, the complainant and patentee, and Charles Pickles, his expert, contend that the Haughey patent would cover a striker flexibly connected with the leg strap. Mr. Haughey testifies as follows, on page 56:

> "23X Int. When it is held in what you call a "right-angular position, is it a pendent?
>
> "A. Not when it is held in a right-angular "position, *and maintained in that position.*
>
> "24X Int. Why would it not be a pendent?
>
> "A. It would not be a pendent in a right-angu- "lar position, *but if it departs from a right-angular "position then it would be a dependent or a pendent.*

And on page 57:

"62X Int. Supposing it was in a position mid-
" way between the vertical position, which you have
" described as being a pendent, and the horizontal
" position, which you have called a right-angular
" position and say would not be a pendent, *so that it*
" *did not assume, and could not assume, a vertical*
" *position, or strike the leg by which it was carried,*
" *would it then be a pendent?*

"A. Yes, sir. It would be a pendent in pro-
" portion to the extent that it deviated from a right
" angle."

The complainant's expert, Pickles, in answer to the 9X Int., page 60, defines a pendent as follows:

"A pendent is something suspended below a
" horizontal line; that is the definition as used in
" expressing a construction in machinery."

And again, in answer to the 35X Int., page 62, Mr. Pickles says:

"In mechanics, or descriptions of machinery,
" when we say anything is a pendent, that is, pendent
" or dependent, it is generally understood that it hangs
" down. It does not necessarily bind it to any par-
" ticular angle."

Both the complainant and his expert contend that the slightest deviation from a horizontal plane of the projecting striker would transfer it into a pendent. It is perfectly evident, therefore, that a device like this so-called Stewart device, consisting of rubber, would of necessity deflect or hang down to a greater or less extent, which, of course, would depend more or ess upon the length of time it had been used.

In Q. 16, page 203, Francis Stewart was asked:

"After these devices have been used for more or
" less time, do the projecting ends maintain their lat-
" eral positions?

"A. That is all owing to the size of the hose. "If the hose were heavy it would not be apt to sag "much, but if the hose were light it certainly would "sag the same as anything else."

As Mr. Stewart testifies in answer to XQ. 33, page 204, they did not generally use the large hose which was around the stable, but bought a smaller size to make these devices from, which naturally would be more flexible and more inclined to depend.

The complainant's expert, Pickles, in attempting to show that a flexible connection would be the same as a loose joint, testified, when asked to give an example of a loose joint in which the two separate pieces were not jointed together, as follows (61X Int., page 64):

"*Rubber is treated in that way*, where it is one "continuous piece, one portion of which will be flexi- "ble and the balance will be rigid."

And, in answer to XQ. 62, page 64, he states that loosely jointed and flexible are "identically the same in this case." Consequently, we have in the rubber hose used by the Thirteenth and Fifteenth Streets Railway Company of Philadelphia, and testified to by Mr. Stewart, a clear anticipation of the Haughey patent, if the construction placed upon the Haughey patent by the complainant, Mr. Haughey, and his expert, Mr. Pickles, is correct, for we find in this device a leg strap, *i. e.*, a piece of hose encircling the horse's leg and a pendent, according to the definition of both Mr. Haughey and Mr. Pickles, and a flexible connection between the pendent and the leg strap.

As to the extent of the use of this rubber hose boot the attention of the Court is directed to the testimony of Mr. Stewart. Mr. Stewart took charge of the Thirteenth and Fifteenth Streets Railway Company, in the City of Philadelphia, in the year 1868, and remained with them until the year 1875, and testifies, in answer to Q. 19, page 203, that he used this device off and on there at times until he left. He used this device in

place of the well-known straw boot, for the same purpose and in the same manner, interchangeably with it, according to the peculiarities of the horse upon which it was placed, sometimes preferring the straw boot, and sometimes the rubber hose. The straw boot is a device which was generally in use, and is to-day.

In XQ. 34, page 204, the witness was asked, referring to this boot shown in the drawing of the Stewart device:

EXHIBIT D.

At the same time that the Thirteenth and Fifteenth Streets Railway Company were using these devices shown in the Stewart drawing, they were also using that device exhibited in respondents' Exhibit D, which consists of a leg strap with a series of projecting loops, almost identical with what is disclosed in the Dickinson 1879 patent, and shown in the Respondents' Exhibit Dickinson Interfering Strap, Omitting Internal Projections C.

This device, defendants' Exhibit D, was produced by the witness, Joseph Blankley, the foreman for John Hunter, harness-maker in Philadelphia, who testifies that he made a number of these boots prior to the year 1880, and sold them in the general course of business (Qs. 5 to 18, pages 198, 199). Francis Stewart testifies that these boots were used by him on the horses at the Thirteenth and Fifteenth Streets Railway Company between 1868 and 1875, and that after they had been used the projecting loops would sag or hang down (Qs. 6 to 10, pages 202, 203). These devices were generally used in the business of the company, and as the witness testifies, *they never were used experimentally* (see answer R-DQ. 83, page 208). This device embodies all the features of the Haughey patent, if it is to be interpreted in the manner specified by the complainant and his expert. There is the leg strap; there is the dependent striking portion, or pendent, and there is a flexible connection between the striking portion and the leg strap.

In the Respondents' Exhibit Hunter Illustrative Device No. 1, is shown a boot similar to the interfering strap made